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Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
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Proposals and contributions received from Governments

Peru: elements for inclusion in the United Nations Convention against Corruption

I. Preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and recovering such assets

1. Peru proposes the inclusion of the following provisions under this section of the draft convention:

"1. States Parties shall, in accordance with their domestic laws, afford one another the widest measure of cooperation and assistance regarding the most effective ways and means of preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption by adopting, inter alia, effective measures and mechanisms for:

"(a) Exchanging with other States Parties information on corrupt methods and expedients employed in carrying out transfers of assets, including funds, of illicit origin derived from acts of corruption; and

"(b) Cooperating with other States Parties, through their financial institutions and regulatory and oversight bodies, in the detection and freezing of transfers and transactions, in the economic and financial systems, involving assets, including funds, of illicit origin derived from acts of corruption.

"2. States Parties shall cooperate with one another for the purpose of implementing appropriate and effective measures to ensure that the officials in charge of their banking and financial systems and of their regulatory and oversight bodies help to prevent transfers of assets, including funds, of illicit origin derived from acts of corruption by, inter alia, recording transactions in a transparent manner; clearly identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; lifting bank secrecy when necessary; detecting and subsequently ordering the freezing of assets,

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including funds, of illicit origin derived from acts of corruption; and facilitating the recovery of such assets by their countries of origin.

"3. States Parties shall cooperate with one another in ensuring that their banking and financial systems and their regulatory and oversight bodies prohibit the establishment of banks or other financial institutions with no real existence and demand that banks in turn require from their correspondent or related banks the strict observance of anti-money-laundering policies such as the 'know-your-client' principle and the reporting of suspicious activities.

"4. States Parties shall cooperate with one another in ensuring that their banking and financial institutions maintain records, over an appropriate period of time, of transactions carried out. The records should contain information relating to the amount of the transaction, the identity and domicile of the participants in the transaction, the legal capacity of anyone participating on behalf of a legal person and the identity of the true beneficiary of the transfer in question as well as an exact description of the transaction.

"5. In connection with paragraph 4, States Parties shall cooperate with one another for the purpose of preventing fictitious companies and legal entities of any type from concealing from the judicial authorities or from the banking and financial system the identity of the true owners of assets, including funds, and that of the true beneficiaries of transactions. To that end, States Parties shall cooperate with one another in establishing uniform standards relating to the criminal, civil and administrative liability of legal persons involved in acts of corruption, including banking and financial institutions, and of the natural persons responsible for the acts of such legal persons.

"6. States Parties shall cooperate with one another in ensuring that bank secrecy and taxation provisions do not hamper judicial and administrative cooperation in preventing and combating corruption. Accordingly, as provided for in this article, a State Party may not invoke bank secrecy in order to refuse to render the cooperation and assistance requested by another State Party.

"7. For the purposes of this Convention, the recovery of assets, including funds, of illicit origin by the affected countries of origin shall be an inalienable right insofar as the transferred assets of illicit origin derive from acts of corruption and related offences.

"8. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences, with a view to facilitating the recovery of assets, including funds, of illicit origin derived from acts of corruption.

"9. In coordination with the banking and financial institutions and with the regulatory and oversight bodies of their respective countries, States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might give rise to transfers and concealment of assets, including funds, of illicit origin derived from acts of corruption and in providing the guarantees necessary for facilitating the return of such assets to their countries of origin.

"10. States Parties shall afford one another mutual technical assistance in the revision of their respective financial laws with a view to eliminating any regulatory gaps that might permit the uncontrolled transfer of assets, including funds, of illicit origin derived from acts of corruption. When appropriate, such assistance shall also include the assessment of the legislation in force for the purpose of updating it in the light of relevant current legal trends and theories.

"11. States Parties shall, in conformity with their respective legal systems, afford one another the widest measure of technical assistance in preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and in the recovery of such assets by their countries of origin through the promotion of the mutual exchange of relevant experience and specialized knowledge.

"12. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating transfers of assets, including funds, of illicit origin derived from acts of corruption and promoting the recovery of such assets by their countries of origin. Those programmes shall be concerned with:

"(a) Detection and freezing of transfers of assets, including funds, of illicit origin derived from acts of corruption;

"(b) Surveillance of the movement of assets, including funds, derived from acts of corruption and of the methods used to transfer, conceal or disguise such assets;

"(c) Appropriate and efficient judicial and administrative mechanisms and methods for facilitating the repatriation of assets, including funds, of illicit origin derived from acts of corruption.

"13. States Parties shall cooperate with one another for the purpose of preventing and combating the transfer of assets, including funds, of illicit origin derived from acts of corruption and of promoting ways and means of recovering such assets by, inter alia, establishing a financial intelligence unit that will freely exchange with other such units any information that it possesses without the need for legal formalities. The recipient financial intelligence unit should be able to use that information within its country in accordance with the legislation governing it.

"14. In order to facilitate the recovery of assets, including funds, derived from acts of corruption, States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective.

"15. States Parties shall not be entitled to refuse to cooperate with one another and shall accordingly afford mutual assistance with a view to expediting and providing guarantees in respect of proceedings initiated for the purpose of bringing about the return of assets, including funds, of illicit origin derived from acts of corruption to their countries of origin after being transferred. States Parties shall cooperate in providing each other with the names of experts who could assist in achieving that objective."

Proposal regarding a seminar to examine the problem of the recovery of assets

2. It is proposed that an international seminar, organized by the Centre for International Crime Prevention, be held in parallel with the second session of the Ad

Hoc Committee for the Negotiation of a Convention against Corruption for the purpose of identifying cases of corruption in which assets, including funds, of illicit origin derived from corruption are transferred through the domestic and international financial system with the aim of considering, in each specific case, appropriate measures and mechanisms for bringing about the recovery of the assets by their countries of origin.

3. Among other topics, the seminar could offer States an opportunity to consider the appropriateness of establishing a United Nations body consisting of specialists in the recovery of assets whose purpose would be to provide requesting countries with legal assistance in their efforts to recover assets.

II. International cooperation

4. Peru proposes the inclusion of the following provisions under this section:

"1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of cooperation regarding the most effective ways and means of preventing, detecting, investigating and punishing acts of corruption. They shall also cooperate with one another for the purpose of promoting cooperation and coordination directed towards preventing and combating corruption and related offences. In particular, each State Party shall adopt effective measures and mechanisms:

"(a) To establish channels of communication between their competent authorities, institutions and agencies or, where such channels exist, to improve them, in order to facilitate the secure, effective and rapid exchange of information relating to crimes of corruption and to their links with other criminal activities;

"(b) To exchange information with other States Parties in connection with ongoing investigations of crimes of corruption and related offences and also during the detection of acts of corruption. To that end, States Parties shall establish, within their respective countries, a data bank containing information about institutions and officials and other persons concerned with the fight against corruption, which could be distributed and circulated to States so requesting;

"(c) To cooperate with other States Parties in the conduct of investigations relating to the identity, whereabouts and activities of persons involved in crimes of corruption and in the tracing of third parties involved;

"(d) To coordinate the judicial, administrative and other measures necessary for the prompt detection, investigation and punishment of crimes of corruption and related offences;

"(e) To compile and share analytical experiences of acts of corruption at the bilateral level and through subregional, regional and international organizations and agencies.

In order to facilitate and improve the efficiency of the measures and mechanisms referred to above, each State Party shall designate a liaison officer or responsible central official whose name and functions shall be communicated, for registration and circulation to States Parties, to the Centre for International Crime Prevention.

"2. States Parties shall cooperate with one another for the purpose of adopting the necessary legal and administrative measures in order that letters rogatory concerning corruption sent by one State Party to another State Party can be considered and transmitted with priority and with the avoidance of returns or delays for reasons of form that do not affect the substance of the request.

"3. States Parties shall cooperate with one another in implementing appropriate and effective measures in order that their banking and financial systems can prevent acts of corruption and related offences by, inter alia, recording transactions in a transparent manner; identifying their clients; not granting preferential or advantageous conditions to politicians or public officials; informing competent authorities about suspicious transactions; and facilitating the detection and subsequent freezing of assets.

"4. States Parties shall cooperate with one another in eliminating any regulatory gaps in their respective laws that might permit or give rise to acts of corruption and related offences.

"5. States Parties shall cooperate with one another for the purpose of expediting the process of recognition of judicial sentences establishing criminal, civil and administrative liability in cases of corruption and related offences in accordance with this Convention.

"6. States Parties shall cooperate with one another, through their national authorities or entities responsible for preventing and combating corruption and promoting ethics and transparency in public administration, for the purpose of exchanging successful experiences and promoting transparency in public administration and the private sector by, inter alia, adopting transparent auditing and public procurement regulations and procedures.

"7. States Parties shall, with a view to facilitating efficient implementation of the provisions arising from this Convention, conclude bilateral or multilateral agreements or arrangements on direct cooperation among their respective law enforcement agencies and, where such agreements or arrangements already exist, amend them in order to increase cooperation and coordination. In the absence of such agreements and arrangements between States Parties, this Convention shall be considered the basis for cooperation in preventing and combating corruption and related offences. Where appropriate, States Parties shall also conclude agreements and arrangements with subregional, regional and international organizations for the purpose of increasing cooperation and coordination among their respective national authorities.

"8. In coordination with the Office for Drug Control and Crime Prevention, States Parties shall cooperate in maintaining a database that includes evaluations and national plans for combating corruption, with a view to establishing a guide to best practices that may help in promoting cooperation among them.

"9. States Parties shall support the Centre for International Crime Prevention through voluntary contributions in order to promote cooperation programmes and projects, especially ones aimed at developing countries, with a view to implementing this Convention."

III. Technical assistance

5. Peru proposes the inclusion of the following provisions under this section:

"1. States Parties shall, in accordance with their respective legal systems, afford one another the widest measure of technical assistance, especially for the benefit of developing countries, in the prevention, detection, investigation and punishment of acts of corruption and related offences by exchanging relevant experience and specialized knowledge and providing one another with all types of material, technical and other support used, in particular, in their respective national programmes and plans for combating corruption.

"2. States Parties shall assist one another in the conduct of evaluations, studies and research relating to the types, causes, effects and costs of corruption in their respective countries with a view to formulating national strategies and action plans for combating corruption with the participation of national authorities and civil society.

"3. Each State Party shall formulate, develop or upgrade training programmes specifically designed for personnel responsible for preventing and combating corruption, including prosecutors, judges and police officers. Those programmes, which could include secondments and internships, shall be concerned with:

"(a) Identification of acts of corruption with a view to their subsequent punishment;

"(b) Effective measures employed in the prevention, detection, investigation, punishment and control of acts of corruption and related offences;

"(c) Gathering of evidence and investigative methods;

"(d) Methods used in protecting victims and witnesses who cooperate with the judicial authorities.

"4. States Parties shall, in affording mutual technical assistance in preventing and combating corruption, organize, when appropriate, subregional, regional and international conferences and seminars for the purpose of promoting cooperation and mutual assistance.

"5. States Parties shall promote technical assistance activities that facilitate extradition and mutual judicial assistance. Such technical assistance could include secondments or internships of personnel arranged between central authorities or agencies responsible for preventing and combating corruption and also training in national and international regulations, comparative legislation and languages.

"6. Within the framework of other relevant bilateral and multilateral agreements or arrangements, States Parties shall endeavour to optimize the training activities being organized in this sphere, in particular those conducted under the auspices of subregional, regional and international organizations.

"7. States Parties shall study voluntary mechanisms with a view to contributing financially to the efforts of developing countries and countries

with economies in transition in applying this Convention through technical assistance programmes and projects.

"8. States Parties shall make voluntary contributions to the Centre for International Crime Prevention for the purpose of fostering, through the Centre, programmes and projects in developing countries with a view to the implementation of this Convention."

IV. Use of terms

6. Peru proposes the inclusion of the following definitions:

"1. For the purposes of this Convention, the terms 'public official', 'government officer' and 'public servant' shall also denote a person who:

"(a) Performs public functions de facto, regardless of whether that person has been formally appointed or assigned to perform such functions;

"(b) Holds a public office but in practice performs the functions specific to another post despite not having been formally appointed or assigned to perform such functions;

"(c) Possesses recognized power or influence in government or public service or administration although without formally holding a public post; or

"(d) Possesses recognized power or influence in government or public service or administration although formally holding a public office not compatible with that power or influence.

"2. For the purposes of this Convention, the term 'corruption' shall denote an act whereby a public official:

"(a) Gives a sum of money or other illicit advantage to an individual with a view to his or her performing an illicit or illegal act, whether criminal or not;

"(b) Influences an individual in some other way with a view to his or her performing an illicit or illegal act, whether criminal or not;

"(c) Influences another public official with a view to his or her acting or refraining from acting in breach of his or her duties, whether or not an economic or other advantage is involved; or

"(d) Influences another public official with a view to his or her acting or refraining from acting in the exercise of his or her duties, whether or not an economic or other advantage is involved, provided that the influence is exerted for the purpose of ensuring that the other public official will act or decide in a particular manner.

"3. For the purposes of this Convention, the term 'corruption' shall additionally apply to any of the acts described in paragraphs 1 and 2 of this article if their objective is to maintain in power—under the same or another name—the group that is exercising governmental authority or to enable that group to gain power within another public or government entity."

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Azerbaijan: proposals on the drafting of a United Nations Convention against Corruption

1. Azerbaijan proposes that the convention consist of four sections.

2. Section 1, General provisions, should include the basic concepts used in the convention; the objectives of the convention; the principles relating to the fight against corruption; activities that involve corruption; persons who commit acts of corruption and related offences; the sphere of application of corruption; and bodies engaged in the fight against corruption.

3. Section 2, Prevention of corruption, should deal with matters relating to restrictions with respect to officials; financial oversight; liability for infringement of financial oversight regulations; measures to ensure that close relatives do not work together; and restrictions on gift-giving.

4. Section 3, Offences related to corruption and liability for committing such offences, should deal with matters relating to offences that create conditions conducive to corruption and with liability for committing such offences; liability for contravening measures to investigate the assets of officials of state bodies and local self-government bodies; liability of physical and juridical persons for the illicit remuneration of officials; liability of state bodies, enterprises, institutions and organizations for illicit business activities and receipt of illicit income; liability of managers of the relevant government executive bodies for failure to implement measures to combat corruption; and other offences related to corruption.

5. Section 4, Elimination of the consequences of offences related to corruption, should deal with matters relating to the restitution of the value of illicitly acquired property and illicitly rendered services; destruction of documents and evidence pertaining to offences as a result of corruption; restrictions on the employment of persons who have been dismissed from their posts in connection with corruption; and procedures for the entry into force of the convention.

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6. In addition, Azerbaijan believes that, in drafting the United Nations Convention against Corruption, it would be useful to consider the United Nations Declaration against Corruption and Bribery in International Commercial Transactions (General Assembly resolution 51/191, annex) and other United Nations conventions; the provisions of national legislation to combat corruption adopted by Member States that are acceptable to all countries; the provisions of other international regulatory instruments; and other rational proposals.

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Mexico: proposed draft of the United Nations Convention against Corruption

With a view to contributing, with the United Nations and members of the international community, to a redoubling of efforts to combat corruption, the Government of Mexico has the honour to submit its proposal on substantive elements to be included in the future United Nations Convention against Corruption, on the understanding that Mexico reserves the right to adapt or amend the text of its proposal in order to improve it, provided that such changes are deemed appropriate.

United Nations Convention against Corruption

Article 1
Purpose

The purpose of this Convention is to promote international cooperation to deter, detect, combat and punish corruption. It also seeks to promote and strengthen the development of mechanisms necessary to ensure the effectiveness of measures and actions to punish acts of corruption in the exercise of public functions and acts associated with the exercise of such functions, as well as corruption among individuals.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Public function" shall mean any temporary or permanent, paid or honorary activity performed by a natural person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;

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(b) "Public official" shall mean any person or employee of the State or its agencies, including those who have been selected, appointed, commissioned or elected to perform activities or functions in the name of the State or in the service of the State, and who holds a legislative, administrative or judicial office, at any level of its hierarchy;

(c) "Foreign public official" shall mean any person who performs a public function or holds a position, post or commission of any kind for a foreign country, including for a public agency or public enterprise;

(d) "International civil servant" shall mean any person who performs a public function, whether such person is an official or holds a position, post or commission of any kind for an international organization;

(e) "International organization" shall mean a public, intergovernmental, private or non-governmental organization whose presence and sphere of activity include two or more States and which is situated in one of the States Parties to the Convention;

(f) "Property" shall mean assets of any kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and any document or legal instrument demonstrating, purporting to demonstrate or relating to ownership or other rights pertaining to such assets;

(g) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence established in accordance with this Convention;

(h) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority;

(i) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority;

(j) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as set forth in article 9 [Criminalization of the laundering of proceeds of crime] of this Convention.

Article 3
Scope of application

1. This Convention shall not apply to cases in which an act of corruption is committed in one State, the alleged criminal is a national of that State and is present in the territory of that State and no other State is entitled to exercise its jurisdiction in accordance with article 18 [Jurisdiction], with the exception of the provisions of articles 15 [Mutual legal assistance], 22 [Collection, exchange and analysis of information on the nature of corruption], 23 [Training and technical assistance] and 24 [Preventive measures].

2. For the purposes of implementing this Convention, it shall not be necessary for the offences set forth in it to result in damage or harm to state property.

Article 4
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5
Acts of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences the following acts of corruption:

(a) The solicitation or acceptance, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, or the promise to grant them, in exchange for any act or omission in the performance of his or her public functions;

(b) The promising, offering or granting, directly or indirectly, to a public official or a person who performs public functions, of any article of monetary value or other undue benefit, such as a gift, favour or advantage for himself or herself or for another person or entity, in exchange for any act or omission in the performance of his or her public functions;

(c) The intentional promising, offering or granting to a foreign public official, directly or indirectly, by its nationals or natural or legal persons who have habitual residence in its territory or are domiciled therein, of any article of monetary value or other undue benefit that are to his or her own advantage or to the advantage of another person or entity, such as a gift, favour or advantage, in exchange for which that official, in the performance of his and her public functions, performs or fails to perform any act in relation to an economic, financial or commercial transaction;

(d) The abuse of functions or any act or omission in the discharge of his or her functions by a public official, international civil servant or a person who performs public functions, for the purpose of obtaining illicit benefits for himself or herself or for a third party;

(e) The illicit enrichment or the increase in the assets of a public official that significantly exceeds his or her legitimate income during the performance of his or her functions and that he or she cannot reasonably justify;

(f) Trading in influence, understood as:

(i) The use of the ability of a public official to exercise improper influence on decision-making within or outside the government apparatus; or

(ii) The exercise of coercive influence on third parties for the purpose of acquiring an advantage for oneself or for third parties;

(g) The improper use by a public official or a person who performs public functions, for his or her own benefit or that of a third party, of any kind of classified or confidential information that that official or person who performs public functions has obtained because of or in the performance of his or her functions;

(h) The improper use by a public official or a person who performs public functions, for his or her own benefit or that of a third party, of any kind of property belonging to the State or to any firm or institution in which the State has a proprietary interest, to which that official or person who performs public functions has access because of or in the performance of his or her functions;

(i) Any act or omission by any person who, personally or through a third party, or acting as an intermediary, seeks to obtain a decision from a public authority whereby he or she illicitly obtains for himself or herself or for another person any benefit or gain;

(j) The diversion by a public official, for purposes unrelated to those for which they were intended, for his or her own benefit or that of a third party, of any movable or immovable property, monies or securities belonging to the State or to an individual, that such official has received by virtue of his or her position for purposes of administration, custody or for other reasons;

(k) The soliciting, directly or indirectly, by a public official or a person who performs public functions, of any article of monetary value or other improper benefits or in quantities exceeding those established by law, as a tax or contribution, surcharge, revenue, interest, salary or remuneration.

2. The attempted commission or complicity in the commission of the offence referred to in paragraph 1 (c) of this article shall constitute an offence of the same degree, whether an attempt or complicity is involved in the bribing of a public official of a State Party.

3. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences participation as the perpetrator, co-perpetrator, instigator, accomplice, abettor or in any other capacity in the commission, attempted commission, association with or conspiracy to commit any of the acts referred to in paragraph 1 of this article, as well as conduct by any person who, with knowledge of the aim of an act of corruption, takes an active part in organizing, managing, aiding, abetting, facilitating, authorizing or counselling such acts.

4. Each State Party shall establish custodial sanctions for acts of corruption established in accordance with this article, which shall take account of the seriousness of such acts.

5. When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

Article 6

Progressive development and harmonization of national legislation

1. Each State Party shall take such measures as may be necessary to ensure that the instrument and the proceeds of the crime derived from the acts referred to in article 5 of this Convention or assets of equal value to such proceeds can be frozen or confiscated or that monetary penalties with similar effect are applied.

2. States Parties shall endeavour to establish and support auditing mechanisms in order to deter and detect corruption in public administration and impose additional civil or administrative sanctions against any public official who commits acts of corruption. Such sanctions shall include, inter alia, private or public disciplinary measures; private or public reprimand; suspension in position, post or commission; dismissal; economic sanctions; or temporary disqualification from holding positions, posts or commissions in public service.

3. Each State Party shall establish and support auditing mechanisms in order to deter and detect corruption outside public administration, in particular in the private sector in its relations with the Government, and shall impose additional civil or administrative sanctions against a person subject to sanctions for commission of the acts set forth in article 5 of this Convention.

4. States Parties shall endeavour to ensure that the statute of limitations period applicable to criminal proceedings or sanctions is doubled in cases of persons who, having committed an act of corruption, are outside the jurisdiction of a State Party, if for that reason it is not possible to institute criminal proceedings, conclude a trial or execute a sanction.

5. This Convention shall also apply, by mutual agreement between two or more States Parties, to any other acts of corruption that are not set forth in it.

6. For the purposes indicated in articles 5 [Acts of corruption] and 9 [Criminalization of the laundering of proceeds of crime] of this Convention, the fact that the property obtained or derived from an act of corruption has been intended for political purposes or the claim that an act of corruption has been committed for political reasons or aims shall not in themselves be sufficient ground for considering such an act a political offence or an ordinary offence related to a political offence.

Article 7
Corruption in the private sector

Each State Party shall take such measures as may be appropriate to deter and combat corruption in the private sector. To that end, each State Party shall, inter alia, establish as criminal offences the following conduct:

(a) The solicitation or acceptance by any natural person who works or provides services in entities of the private sector, directly or indirectly, of an undue advantage, for himself or herself or for another person, in order that such person act or refrain from acting in the exercise of his or her obligations in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector; and

(b) The intentional promise, offering or giving to a natural person who works or provides services in entities of the private sector, directly or indirectly, of any article of monetary value or other undue advantage, for himself or herself or for another person or entity, as a gift, favour, promise or advantage, in exchange for which that person performs or fails to perform any act in relation to an economic, financial or commercial transaction, which results in harm to that entity of the private sector.

Article 8
Criminalization of obstruction of justice

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention.

2. Nothing in this article shall prejudice the right of States Parties to have legislation that protects other categories of public official.

Article 9
Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences:

(a) The acquisition, possession or use of property, knowing, at the moment such property is received, that it is the proceeds of crime;

(b) The administration, custody, disposal, exchange, conversion, deposit, surrender as a surety, transport, transfer, investment, alteration or destruction of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(c) The concealment or disguise of the true nature, source, location, disposition, movement, destination or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(d) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating, authorizing and counselling the commission of any of the offences established in accordance with this article;

(e) The acquisition, possession, use, administration, custody, disposal, exchange, conversion, surrender as a surety, transport, transfer, investment, alteration or destruction of property that derives from or is the proceeds of crime if a person who is so obliged by virtue of his or her profession, position, post or commission does not take the necessary measures to ascertain the lawful origin of such property.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall include as predicate offences, as a minimum, the offences established in accordance with article 5 [Acts of corruption] of this Convention;

(b) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(c) For the purposes of paragraph 1 of this article, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations; and

(e) When the commission of any of the offences referred to in paragraph 1 of this article requires proof of the knowledge, intent, aim, purpose or agreement for the commission of such offences, these may be inferred from objective factual circumstances.

Article 10
Measures to combat money-laundering

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks, non-bank financial institutions and for natural or legal persons engaged in professional or business activities, including non-profit organizations, particularly susceptible to money-laundering, within its competence, in order to deter and detect money-laundering mechanisms, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious or unusual transactions;

(b) Shall, without prejudice to article 15 [Mutual legal assistance] of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering, including, where appropriate under domestic law, judicial authorities, have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, seizure, analysis and, where appropriate, dissemination of information received through reports of suspicious or unusual transactions, as potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 11
Accounting measures to combat the bribing of public officials

1. In order to combat effectively the bribing of foreign and international public officials by legal persons subject to their jurisdiction, each State Party shall take such measures as may be necessary to incorporate within its laws and regulations:

(a) The keeping and maintenance of books and records of accounts;

(b) The disclosure of financial statements and publication of accounting and auditing standards; and

(c) The prevention of articles of monetary value or gifts, favours or advantages granted in the commission of the offences set forth in article 5, paragraph 1 (c), of this Convention from being declared tax deductible and prohibition of the establishment of off-the-books accounts, the maintenance of double accounting systems or of inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents for the purpose of bribing foreign public officials or of concealing such bribery.

2. Each State Party shall provide effective, proportionate and dissuasive civil, administrative or criminal penalties for such omissions and falsifications in respect of the books, records, accounts and financial statements of such legal persons.

Article 12
Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, in accordance with principles of its domestic law, to establish the liability of a legal person situated in its territory or constituted in accordance with its legislation, when a person liable for its conduct or control commits, in such capacity, an offence set forth in this Convention. Such liability may be criminal, civil or administrative.

2. The liability referred to in the preceding paragraph shall be incurred without prejudice to the criminal liability of the natural persons who allegedly committed the offences.

3. Each State Party shall, in particular, ensure that legal persons held liable in accordance with paragraph 1 of this article are subject to effective, proportionate and dissuasive criminal, civil or administrative sanctions, including monetary sanctions.

Article 13
Confiscation and seizure

1. Each State Party shall adopt such legislative and other measures as may be necessary to regulate the administration and use of frozen, seized or confiscated property that is the proceeds of crime and shall ensure that these are administered by an official body established for that purpose. Such measures shall include standards relating to the return of secured property, which will remain at the disposal of the person who has a right to such property. Each State Party shall also consider measures relating to the administration and use of abandoned property as well as respect for the time limits that result in abandonment, [for example, six months,]

beginning from the notification of freezing, seizure or confiscation in the case of movable property and [one year] in the case of immovable property.

2. Each State Party shall adopt, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

3. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

4. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

5. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

6. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

7. For the purposes of this article and article 14 [International cooperation for purposes of confiscation] of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized.

8. States Parties may consider the possibility of requiring that an offender accused or suspected of acts of corruption demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with principles of their domestic law and with the nature of the judicial and other proceedings.

9. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

Article 14
International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 13 [Confiscation and seizure], paragraph 2, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 13 [Confiscation and seizure], paragraph 2, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 13 [Confiscation and seizure], paragraph 2, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 13 [Confiscation and seizure], paragraph 2, of this Convention for the purpose of eventual confiscation to be ordered either by the requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 15 [Mutual legal assistance] of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 15, paragraph 14, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, the State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 15
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in criminal and non-criminal investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention as provided for in article 3 [Scope of application], granting, when appropriate, requests originating from authorities that, in accordance with its domestic law, have the power to investigate or try the acts of corruption set forth in this Convention with a view to obtaining evidence and carrying out other acts necessary to facilitate the prosecutions and proceedings pertaining to the investigation or trial of acts of corruption.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 12 [Liability of legal persons] of this Convention in the requesting State Party.

3. In accordance with applicable national legislation and the relevant agreements or arrangements that may be in force between them, States Parties shall afford one another the widest measure of assistance in the identifying, tracing, confiscating and seizing of property obtained or derived from the commission of offences established in accordance with this Convention, of property used in the commission of such offences or of proceeds of such property.

4. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and freezing, and seizures;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party; and

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party.

5. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

6. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

7. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

8. For the purposes of paragraph 7 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person; and

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

9. Unless the State Party from which a person is to be transferred in accordance with paragraphs 7 and 8 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which he or she is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

10. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. The central authorities shall be responsible for preparing and receiving the requests for assistance and cooperation to which this Convention refers.

11. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention.

12. A request for mutual assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

13. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party, which should preferably be specified in the request.

14. The requesting State Party shall provide prompt notification when it no longer requires the assistance requested.

15. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

16. The requesting State Party may request information on the status and progress of measures taken by the requested State Party to satisfy its request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

19. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

20. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction; and

(d) If it would be contrary to the legal system of the requested State Party relating to mutual legal assistance for the request to be granted.

21. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

22. Reasons shall be given for any refusal of mutual legal assistance.

23. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

24. Before refusing a request pursuant to paragraph 20 of this article or postponing its execution pursuant to paragraph 23 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

25. Without prejudice to the application of paragraph 9 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

26. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

27. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public; and

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government

records, documents or information in its possession that under its domestic law are not available to the general public.

28. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

Article 16

Disposal of confiscated proceeds of crime or property and return to the countries of origin or to countries or persons authorized to receive confiscated proceeds of crime or property

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 13 [Confiscation and seizure] or 14 [International cooperation for purposes of confiscation], paragraph 1, of this Convention shall be disposed of by that State Party.

2. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish legal provisions that enable the central authorities or agencies with relevant responsibilities to share property constituting proceeds of crime with other States Parties to this Convention in cases when this would not entail damage to the property of those States.

3. The State Party that applies its own decisions with respect to confiscation, or those of another State Party, which have resulted in a final judgement with respect to property constituting proceeds of crime, shall dispose of such property in accordance with its own legislation. To the extent that its laws permit and in conditions that it deems appropriate, that State Party may transfer, in whole or in part, such property to another State Party that took part in the related investigation or judicial proceedings.

4. When acting on the request made by another State Party in accordance with articles 13 [Confiscation and seizure] and 14 [International cooperation for purposes of confiscation] of this Convention, States Parties may consider concluding agreements or arrangements on sharing among themselves, without prejudice to the provisions of paragraph 3 of this article, on a regular or case-by-case basis, such proceeds of crime or property, or funds derived from the sale of such proceeds of crime or property, in accordance with their domestic law or administrative procedures.

Article 17

Return of property to the country of origin in cases of damage to state property

1. Notwithstanding the provisions of articles 13, 14 and 16, of this Convention, each State Party shall adopt such measures as may be necessary to enable its central authorities or agencies with relevant responsibilities to return to the country of origin property constituting proceeds of crime that has been obtained to the detriment of that country.

2. In such cases, the property shall not be subject to the system of sharing between the requesting State and the requested State.

Article 18
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with articles 5 [Acts of corruption], 8 [Criminalization of obstruction of justice] and 9 [Criminalization of the laundering of proceeds of crime] of this Convention when:

(a) The offence is committed against the State Party; or

(b) The offence is committed by a national of that State Party; or

(c) The offence is committed in the territory of that State Party; or

(d) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time the offence is committed.

2. Subject to article 4 [Protection of sovereignty] of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party; or

(b) The offence is committed by a stateless person who has his or her habitual residence in its territory; or

(c) The offence is one of those established in accordance with article 5 [Acts of corruption], paragraph 1 (c), of this Convention and is committed outside its territory and has, in the national territory of the State Party, the effect of an offence established in accordance with article 9 [Criminalization of the laundering of proceeds of crime], paragraph 1 (a), (b) or (c), of this Convention.

3. A State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her solely on the ground that he or she is one of its nationals.

4. The investigation and prosecution of the crime of corruption of a foreign public official or an international civil servant shall be subject to the applicable rules and principles of each State Party. They shall not be influenced by considerations of national economic interest, the potential effect on relations with another State or the identity of the natural or legal persons involved.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified, or has otherwise learned, that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention does not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 19
Extradition

1. This article shall apply to the offences covered by this Convention and in cases where the person who is the subject of the request for extradition is located in

the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them. For purposes of extradition, none of the offences set forth in the Convention shall be considered a political offence.

3. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

4. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

5. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

6. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

7. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

8. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

9. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

10. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 9 of this article.

11. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

12. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

13. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of those reasons.

14. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

15. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

16. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 20
Bank secrecy

1. The requested State Party shall not invoke bank secrecy as a ground for refusal to provide the assistance sought by the requesting State Party. The requested State Party shall apply this article in accordance with its domestic law, its procedural provisions or bilateral or multilateral agreements or arrangements with the requesting State Party.

2. The requesting State Party shall be obligated not to use any information received that is protected by bank secrecy for any purpose other than the proceeding for which that information was requested, unless authorized by the requested State Party.

3. States Parties shall strengthen their laws in order to prevent bank secrecy from being used to obstruct criminal or administrative investigations that relate to the subject of this Convention.

Article 21
Protection of witnesses

1. Each State Party shall take appropriate measures to safeguard and provide effective protection from potential retaliation or intimidation for witnesses, persons who report offences, informers and experts in judicial or administrative proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them. Each State Party shall adopt such measures as may be necessary to safeguard and protect persons who collaborate with the authorities, witnesses, persons who report offences, informers and experts who give testimony for the pursuit, prosecution and punishment of acts of corruption.

2. The provisions of this article shall also apply to victims who are natural persons insofar as they are witnesses.

Article 22
Collection, exchange and analysis of information on the nature of corruption

1. Each State Party shall consider analysing, in consultation with experts, trends in corruption in its territory, the circumstances in which corruption operates, as well as the groups, individuals and forms and means involved.

2. States Parties shall consider developing and sharing analytical expertise concerning acts of corruption with each other and through international and regional organizations. For that purpose, common definitions, standards and methodologies should be developed and applied as appropriate.

3. States Parties shall consider monitoring its policies and actual measures to combat corruption and making assessments of their effectiveness and efficiency.

4. States Parties shall afford one another the widest measure of mutual technical cooperation concerning the most effective ways and means of deterring, detecting, investigating and punishing acts of corruption. To that end, they shall promote the exchange of information on best practices and successful experience through agreements and meetings of their competent bodies and institutions with a view to publicizing mechanisms for administrative improvements and measures to combat corruption and shall devote special attention to ways and means of enabling civil society to participate in the fight against corruption.

5. States Parties shall consider establishing a centre for the dissemination of information on best practices to combat corruption. The centre would be responsible for requesting, receiving, collecting, administering, informing and disseminating successful experience in the fight against corruption. It would also be responsible for informing States Parties of the activities and progress in the measures referred to in paragraphs 1 to 4 of this article. States Parties shall consider making Mexico City the headquarters of this centre for the dissemination of information on best practices to combat corruption.

Article 23
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Techniques used by persons suspected of involvement in offences covered by this Convention;

(c) Detection and monitoring of the movements of proceeds of crime, property or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(d) Collection of evidence;

(e) Methods used in combating corruption committed through the use of computers, telecommunication networks or other forms of modern technology; and

(f) Methods used in the protection of victims and witnesses, persons who report offences, informers and experts.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, where appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 24
Preventive measures

For the purposes set forth in article 1 of this Convention, States Parties shall consider the applicability of legislative, administrative or other measures within their own institutional systems to establish, maintain and strengthen:

(a) Integrity and to deter, detect and, where appropriate, sanction or punish corruption by public officials for acts or omissions that affect the legality, honesty, loyalty, impartiality and efficiency incumbent upon them in the exercise of their

position, post or commission. Such measures could include career civil service systems, mechanisms for the selection and hiring of public officials, tenure and seniority, fair and clear evaluations, awards and incentives, sanctions and fines, indicators for measuring results and so forth;

(b) The effective intervention of their authorities with a view to deterring, detecting and punishing corruption by public officials, including giving those authorities sufficient independence to dissuade officials from exerting any undue influence in the performance of their duties;

(c) Standards of conduct for the correct, honourable and proper performance of public functions. Those standards shall be intended to prevent conflicts of interest and to mandate the proper conservation and use of resources entrusted to public officials in the performance of their functions. The standards shall also establish measures and systems requiring public officials to report to competent authorities acts of corruption in the performance of public functions, as well as systems to promote the autonomy and independence of monitoring bodies. Such measures should help preserve the public's confidence in the integrity of civil servants and government processes;

(d) Codes of ethics and standards of conduct for the correct, honourable and proper performance of activities by individuals. Such standards shall be intended to prevent conflicts of interest, both between individuals and between individuals and public officials. The codes and standards shall also establish measures and systems that promote the reporting of illicit acts and corruption between individuals and in relations between individuals and public officials;

(e) Mechanisms to enforce those standards of conduct;

(f) Instructions to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities;

(g) Systems for registering the income, assets and liabilities of persons who perform public functions in posts specified by law and, where appropriate, for making such registration public;

(h) Systems of government hiring and procurement of goods and services that ensure the openness, equity and efficiency of such systems. Those systems shall consider restricting, to the greatest extent possible, the conferring of discretionary authority on public officials with respect to the granting of administrative authorizations and resolutions, as well as mechanisms for the strict monitoring of existing discretionary authority;

(i) Government revenue collection and control systems that deter corruption, as well as mechanisms to provide effective and timely assistance to taxpayers regarding steps and measures to be taken in their dealings with the fiscal authorities;

(j) Mechanisms that promote transparency in the management of public affairs, including relations between the authorities and the general public, which provide, on a mandatory basis, information on the results of the steps and measures taken in dealings with them;

(k) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;

(l) Systems for safeguarding and protecting public officials and other persons who, in good faith, report acts of corruption, witnesses, informers and experts who participate in proceedings against individuals who have allegedly committed acts of corruption, including protection of their identities, in accordance with their constitutions and fundamental principles of their domestic law. Those systems shall also establish the necessary mechanisms for promoting confidence in public officials and for encouraging citizens to report acts of corruption;

(m) Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating acts of corruption;

(n) Deterrents to the bribing of national and foreign public officials, such as mechanisms to ensure that commercial companies and other types of association maintain books and records that, in reasonable detail, accurately reflect the acquisition and disposition of assets and have sufficient internal accounting controls to enable their officers to detect acts of corruption;

(o) Mechanisms for exchanging information on multinational and transnational corporations that may have committed illicit or improper acts or administrative offences during a government bidding process in any State Party;

(p) Effective mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption through, for example, the inclusion of civil society in decision-making processes, through monitoring committees, through its involvement in public bidding processes and through free access to information;

(q) Consideration of the adoption of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

Article 25
Civil responsibility resulting from acts of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to ensure that natural or legal persons who suffer damages as a result of an act of corruption have the right to initiate civil action to obtain compensation for such damages.

2. Each State Party shall ensure that acts of corruption constitute sufficient grounds for annulling a contract, public bidding, concession or other legal acts.

Article 26
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat and eradicate corruption and to promote and review the implementation of this Convention through a systematic follow-up programme.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall:

(a) Conduct annual multilateral evaluations for the periodic review of the implementation of this Convention;

(b) Make recommendations to improve its implementation;

(c) Facilitate the exchange of information among States Parties;

(d) Encourage the mobilization of voluntary contributions to finance the systematic follow-up programme; and

(e) Promote the establishment of a fund to assist least developed countries in the implementation of this Convention.

3. Each State Party shall provide the Conference of the Parties with the information it requires for the aforementioned systematic follow-up programme, concerning its programmes, plans, practices and results, as well as information on legislative and administrative measures adopted to implement this Convention.

Article 27
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 26 [Conference of the Parties to the Convention] of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 26 [Conference of the Parties to the Convention], paragraph 3, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 28
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [...] to [...] in [...]and thereafter at United Nations Headquarters in New York until [...].

2. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

3. This Convention is open for accession by any State. Instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 29
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the [...] instrument of ratification, acceptance, approval or accession.

2. For each State ratifying, accepting, approving or acceding to this Convention after the deposit of the [...] instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State of the relevant instrument.

Article 30
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

3. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party [...] days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

4. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 31
Denunciation

A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 32
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

United Nations A/AC.261/IPM/14

General Assembly

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English
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Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption
Buenos Aires, 4-7 December 2001

Proposals and contributions received from Governments

Colombia: proposed draft of the United Nations Convention against Corruption

Preamble

The States Parties to this Convention,

Considering that globalization of the world's economies has led to a situation where corruption is no longer a local matter but a transnational phenomenon,

Concerned about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development,[1]

Convinced that corruption undermines the legitimacy of public institutions and strikes at society, moral order and justice, as well as at the comprehensive development of peoples,[2]

Bearing in mind that the eradication of corruption is a responsibility of States and that they must cooperate with one another if their efforts in this area are to be effective,[2]

Concerned that cases of corruption, especially on a large scale, tend to involve vast quantities of funds, which constitute a substantial proportion of the resources of the countries affected, and that their diversion causes great damage to the political stability and economic and social development of those countries,

Have agreed as follows:

[1] General Assembly resolution 53/176, second preambular paragraph.

[2] See the Inter-American Convention against Corruption (see E/1996/99).

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Article 1
Statement of purpose

The purpose of this Convention is to promote cooperation [and to assist States Parties in building systems that foster integrity] to prevent and combat corruption [acts of corruption] more effectively.

Article 2
Use of terms

For the purposes of this Convention:

(a) "Act of corruption" shall mean [...];

(b) "Transfer of assets derived from acts of corruption" shall mean [...];

(c) "Repatriation of funds" shall mean [...];

(d) "Illicit enrichment" shall mean [...];

Option 1

(e) "Public official", "government official" or "public servant" shall mean any official or employee of the State or its agencies, including those who have been selected, appointed or elected to perform activities or functions in the name of the State or in the service of the State, at any level of its hierarchy;[2]

Option 2

(e) "Public official" shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function;

(f) "Official" shall mean any person who holds a legislative, administrative or judicial post at any hierarchical level or in any department of government or public administration. By extension, it also applies to any person who performs official functions on a permanent or occasional basis, including persons employed in an enterprise, or any legal person, such as institutions, financial agencies, funds or other public entities";[3]

(g) "Public function" shall mean any temporary or permanent, paid or honorary activity, performed by a natural [or legal] person in the name of the State or in the service of the State or its institutions, at any level of its hierarchy;[2]

(h) "Property" shall mean assets of every kind, whether corporeal or incorporeal, movable or immovable, tangible or intangible, and legal documents or instruments evidencing title to or interest in such assets;[4]

(i) "Proceeds of crime" shall mean any property derived from or obtained, directly or indirectly, through the commission of an offence; [4]

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[3] Legislation of Bosnia and Herzegovina.

[4] See the United Nations Convention against Transnational Organized Crime (General Assembly resolution 55/25, annex I).

(j) "Freezing" or "seizure" shall mean temporarily prohibiting the transfer, conversion, disposition or movement of property or temporarily assuming custody or control of property on the basis of an order issued by a court or other competent authority; [4]

(k) "Confiscation", which includes forfeiture where applicable, shall mean the permanent deprivation of property by order of a court or other competent authority; [4]

(l) "Predicate offence" shall mean any offence as a result of which proceeds have been generated that may become the subject of an offence as set forth in article 5 of this Convention;[4]

(m) "Controlled delivery" shall mean the technique of allowing illicit or suspect consignments to pass out of, through or into the territory of one or more States, with the knowledge and under the supervision of their competent authorities, with a view to the investigation of an offence and the identification of persons involved in the commission of the offence;[4]

(n) "Regional economic integration organization" shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this Convention and which has been duly authorized, in accordance with its internal procedures, to sign, ratify, accept, approve or accede to it; references to "States Parties" under this Convention shall apply to such organizations within the limits of their competence;[4]

(o) "Suspicious transaction" shall mean [...].

Article 3[4]
Scope of application

This Convention shall apply, except as otherwise stated herein, to the prevention, investigation and prosecution of the offences established in accordance with this Convention.

Article 4[4]
Protection of sovereignty

1. States Parties shall carry out their obligations under this Convention in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.

2. Nothing in this Convention shall entitle a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.

Article 5
Criminalization of acts of corruption

1. Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally, the following acts of corruption:[4]

(a) Bribing of a public official: the promise, offering or giving to a public official or a person who performs public duties, directly or indirectly, of an undue

advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her public duties;[4]

(b) Bribe-taking by a public official: the solicitation or acceptance by a public official or a person who performs public duties, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her public duties;[4]

(c) Any act or omission in the discharge of his or her duties by a government official or a person who performs public functions for the purpose of obtaining illicit benefits for himself or herself or for a third party;[2]

(d) The fraudulent use or concealment of property derived from any of the acts referred to in this article;[2]

(e). The use, misuse, misappropriation, diversion and embezzlement or fraudulent or negligent loss of state property by public officials or individuals;

(f) The violation of disqualification and conflict-of-interest rules for state recruitment as laid down in the internal employment regulations of the State Party;

(g) The holding of an interest by a public official, to his or her own advantage or that of a third party, in any type of contract or transaction in which the official is called upon to act by virtue of his or her position or functions;

(h) The improper use by a public official, for his or her own benefit or that of a third party, of influence derived from the discharge of office or performance of functions with a view to obtaining an advantage from another public official in a matter with which the latter is dealing or has to deal;

(i) The unjustified increase in the wealth of a public official during his or her service with the State or within two years following separation from such service;

(j) The issuance of a decision, resolution, ruling or judgement by a public official, in manifest violation of the law, and the failure or refusal to perform, or delay in performing, an act incumbent upon an official by virtue of his or her functions;

(k) Any arbitrary or unjust act by a public official in the discharge of, or exceeding, his or her functions;

(l) The failure by a public official to report to the competent authority facts of which he or she has become aware and which he or she is officially responsible for investigating;

(m) The improper disclosure by a public official of confidential information or documents and the use for his or her own benefit or that of a third party of a scientific discovery or other classified or confidential information or data of which he or she has become aware by virtue of his or her functions;

(n) The improper use, for his or her own benefit or for that of a third party, by a public official who is an employee or executive or a member of a board or governing body of any public institution of information not intended for public knowledge that he or she has obtained by virtue of or in connection with his or her functions during his or her service as a public official or within two years following separation from such service;

(o) Unlawful judicial representation, action or advice in a judicial or administrative matter undertaken by a public official;

(p) The use by a public official who exercises jurisdiction or civil or political authority or holds an executive administrative position or position in a judicial body of the authority or power conferred by public office or functions in favour of or against the electoral chances of a political candidate, party or movement;

(q) Abuse of office or functions by a public official through the performance of public functions other than those incumbent upon him or her by law;

(r) The offering by a citizen of a State Party to a public official of another State Party of money, articles of monetary value, favours or any other advantage in order that the official act or refrain from acting in the exercise of his or her duties in respect of a financial or commercial transaction;

(s) The action taken by a public official of facilitating the escape of a detainee or prisoner entrusted to his or her surveillance, custody or conveyance.

2. Each State Party shall also adopt the necessary measures to establish as a criminal offence participation as a principal, co-principal, instigator, accomplice or accessory after the fact, or in any other manner, in the commission or attempted commission of or in any collaboration or conspiracy to commit any of the offences established in accordance with this article.[2]

3. Subject to their constitutions and fundamental principles of their domestic law, States Parties that have not yet done so shall adopt such measures as may be necessary to establish as criminal offences transnational bribery and illicit enrichment, which shall be considered acts of corruption for the purposes of this Convention;[2]

4. States Parties shall consider adopting such legislative and other measures as may be necessary to establish as criminal offences conduct referred to in paragraph 1 of this article involving a foreign public official or international civil servant; [national or foreign] parliamentarians and other members of [international] parliamentary assemblies; judges and officials of [international] courts; trading in influence whether as the source of influence or beneficiary of the advantage obtained [active or passive trading in influence]; laundering of proceeds from corruption offences; accounting offences related to corruption offences.[5]

Article 6[4]

Measures against corruption

1. Each State Party shall, to the extent appropriate and in accordance with its domestic law, adopt legislative, administrative or other effective measures to promote integrity and to prevent, detect and punish the corruption of public officials, in addition to the measures set forth in article 8 of this Convention.

2. Each State Party shall take measures to ensure effective action by its authorities in the prevention, detection and punishment of the corruption of public officials, including providing such authorities with adequate independence to deter the exertion of inappropriate influence on their actions.

[5] See the Criminal Law Convention on Corruption of the Council of Europe (Council of Europe, *European Treaty Series*, No. 173).

Article 7[4]

Criminalization of the laundering of proceeds of crime

1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;

(ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;

(b) Subject to the basic concepts of its legal system:

(i) The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;

(ii) Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.

2. For purposes of implementing or applying paragraph 1 of this article:

(a) Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;

(b) Each State Party shall include as predicate offences all offences set forth in this Convention. In the case of States Parties whose legislation sets out a list of specific predicate offences, they shall, at a minimum, include in such list a comprehensive range of offences associated with corruption;

(c) For the purposes of subparagraph (b), predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;

(d) Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;

(e) If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence;

(f) Knowledge, intent or purpose required as an element of an offence set forth in paragraph 1 of this article may be inferred from objective factual circumstances.

Article 8[4]

Measures to combat money-laundering [and to prevent and detect the transfer of funds of illicit origin, derived from acts of corruption]

1. Each State Party:

(a) Shall institute a comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions and, where appropriate, other bodies particularly susceptible to money-laundering, within its competence, in order to deter and detect all forms of money-laundering, which regime shall emphasize requirements for customer identification, record-keeping and the reporting of suspicious transactions;

(b) Shall, without prejudice to articles 17 and 28 of this Convention, ensure that administrative, regulatory, law enforcement and other authorities dedicated to combating money-laundering (including, where appropriate under domestic law, judicial authorities) have the ability to cooperate and exchange information at the national and international levels within the conditions prescribed by its domestic law and, to that end, shall consider the establishment of a financial intelligence unit to serve as a national centre for the collection, analysis and dissemination of information regarding potential money-laundering.

2. States Parties shall consider implementing feasible measures to detect and monitor the movement of cash and appropriate negotiable instruments across their borders, subject to safeguards to ensure proper use of information and without impeding in any way the movement of legitimate capital. Such measures may include a requirement that individuals and businesses report the cross-border transfer of substantial quantities of cash and appropriate negotiable instruments.

3. In establishing a domestic regulatory and supervisory regime under the terms of this article, and without prejudice to any other article of this Convention, States Parties are called upon to use as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering.

4. States Parties shall endeavour to develop and promote global, regional, subregional and bilateral cooperation among judicial, law enforcement and financial regulatory authorities in order to combat money-laundering.

Article 9[4]

Liability of legal persons

1. Each State Party shall adopt such measures as may be necessary, consistent with its legal principles, to establish the liability of legal persons for participation in the offences established in accordance with this Convention.

2. Subject to the legal principles of the State Party, the liability of legal persons may be criminal, civil or administrative.

3. Such liability shall be without prejudice to the criminal liability of the natural persons who have committed the offences.

4. Each State Party shall, in particular, ensure that legal persons held liable in accordance with this article are subject to effective, proportionate and dissuasive criminal or non-criminal sanctions, including monetary sanctions.

Article 10[4]
Prosecution, adjudication and sanctions

1. Each State Party shall make the commission of an offence established in accordance with this Convention liable to sanctions that take into account the gravity of that offence.

2. Each State Party shall endeavour to ensure that any discretionary legal powers under its domestic law relating to the prosecution of persons for offences covered by this Convention are exercised to maximize the effectiveness of law enforcement measures in respect of those offences and with due regard to the need to deter the commission of such offences.

3. In the case of offences established in accordance with this Convention, each State Party shall take appropriate measures, in accordance with its domestic law and with due regard to the rights of the defence, to seek to ensure that conditions imposed in connection with decisions on release pending trial or appeal take into consideration the need to ensure the presence of the defendant at subsequent criminal proceedings.

4. Each State Party shall ensure that its courts or other competent authorities bear in mind the grave nature of the offences covered by this Convention when considering the eventuality of early release or parole of persons convicted of such offences.

5. Each State Party shall, where appropriate, establish under its domestic law a long statute of limitations period in which to commence proceedings for any offence covered by this Convention and a longer period where the alleged offender has evaded the administration of justice.

6. Nothing contained in this Convention shall affect the principle that the description of the offences established in accordance with this Convention and of the applicable legal defences or other legal principles controlling the lawfulness of conduct is reserved to the domestic law of a State Party and that such offences shall be prosecuted and punished in accordance with that law.

Article 11[4]
Confiscation and seizure

1. Each State Party shall adopt, to the greatest extent possible within its domestic legal systems, such measures as may be necessary to enable confiscation of:

(a) Proceeds of crime derived from offences covered by this Convention or property the value of which corresponds to that of such proceeds;

(b) Property, equipment or other instrumentalities used in or destined for use in offences covered by this Convention.

2. Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.

3. If proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.

4. If proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.

5. Income or other benefits derived from proceeds of crime, from property into which proceeds of crime have been transformed or converted or from property with which proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.

6. For the purposes of this article and article 12 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or be seized. States Parties shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.

7. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the principles of their domestic law and with the nature of the judicial and other proceedings.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.

Article 12[4]

International cooperation for purposes of confiscation

1. A State Party that has received a request from another State Party having jurisdiction over an offence covered by this Convention for confiscation of proceeds of crime, property, equipment or other instrumentalities referred to in article 11, paragraph 1, of this Convention situated in its territory shall, to the greatest extent possible within its domestic legal system:

(a) Submit the request to its competent authorities for the purpose of obtaining an order of confiscation and, if such an order is granted, give effect to it; or

(b) Submit to its competent authorities, with a view to giving effect to it to the extent requested, an order of confiscation issued by a court in the territory of the requesting State Party in accordance with article 11, paragraph 1, of this Convention insofar as it relates to proceeds of crime, property, equipment or other instrumentalities referred to in article 11, paragraph 1, situated in the territory of the requested State Party.

2. Following a request made by another State Party having jurisdiction over an offence covered by this Convention, the requested State Party shall take measures to identify, trace and freeze or seize proceeds of crime, property, equipment or other instrumentalities referred to in article 11, paragraph 1, of this Convention for the purpose of eventual confiscation to be ordered either by the

requesting State Party or, pursuant to a request under paragraph 1 of this article, by the requested State Party.

3. The provisions of article 17 of this Convention are applicable, mutatis mutandis, to this article. In addition to the information specified in article 17, paragraph 15, requests made pursuant to this article shall contain:

(a) In the case of a request pertaining to paragraph 1 (a) of this article, a description of the property to be confiscated and a statement of the facts relied upon by the requesting State Party sufficient to enable the requested State Party to seek the order under its domestic law;

(b) In the case of a request pertaining to paragraph 1 (b) of this article, a legally admissible copy of an order of confiscation upon which the request is based issued by the requesting State Party, a statement of the facts and information as to the extent to which execution of the order is requested;

(c) In the case of a request pertaining to paragraph 2 of this article, a statement of the facts relied upon by the requesting State Party and a description of the actions requested.

4. The decisions or actions provided for in paragraphs 1 and 2 of this article shall be taken by the requested State Party in accordance with and subject to the provisions of its domestic law and its procedural rules or any bilateral or multilateral agreement or arrangement to which it may be bound in relation to the requesting State Party.

5. Each State Party shall furnish copies of its laws and regulations that give effect to this article and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations.

6. If a State Party elects to make the taking of the measures referred to in paragraphs 1 and 2 of this article conditional on the existence of a relevant treaty, that State Party shall consider this Convention the necessary and sufficient treaty basis.

7. Cooperation under this article may be refused by a State Party if the offence to which the request relates is not an offence covered by this Convention.

8. The provisions of this article shall not be construed to prejudice the rights of bona fide third parties.

9. States Parties shall consider concluding bilateral or multilateral treaties, agreements or arrangements to enhance the effectiveness of international cooperation undertaken pursuant to this article.

Article 13[4]

Disposal of confiscated proceeds of crime or property [*related to the repatriation of funds*]

1. Proceeds of crime or property confiscated by a State Party pursuant to articles 11 or 12, paragraph 1, of this Convention shall be disposed of by that State Party in accordance with its domestic law and administrative procedures.

2. When acting on the request made by another State Party in accordance with article 12 of this Convention, States Parties shall, to the extent permitted by domestic law and if so requested, give priority consideration to returning the

confiscated proceeds of crime or property to the requesting State Party so that it can give compensation to the victims of the crime or return such proceeds of crime or property to their legitimate owners.

3. When acting on the request made by another State Party in accordance with articles 11 and 12 of this Convention, a State Party may give special consideration to concluding agreements or arrangements on the return of funds derived from acts of corruption to their countries of origin in accordance with the provisions of article 19 of this Convention.

Article 14[5]
Jurisdiction

1. Each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences established in accordance with this Convention when:

(a) The offence is committed in the territory of that State Party; or

(b) The offence is committed on board a vessel that is flying the flag of that State Party or an aircraft that is registered under the laws of that State Party at the time that the offence is committed.

2. Subject to article 4 of this Convention, a State Party may also establish its jurisdiction over any such offence when:

(a) The offence is committed against a national of that State Party;

(b) The offence is committed by a national of that State Party or a stateless person who has his or her habitual residence in its territory; or

(c) The offence is:

(i) One of those established in accordance with article 5, paragraph 1, of this Convention and is committed outside its territory with a view to the commission of a serious crime within its territory;

(ii) One of those established in accordance with article 7, paragraph 1 (b) (ii), of this Convention and is committed outside its territory with a view to the commission of an offence established in accordance with article 7, paragraph 1 (a) (i) or (ii) or (b) (i), of this Convention within its territory.

3. For the purposes of article 15, paragraph 10, of this Convention, each State Party shall adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite such person solely on the ground that he or she is one of its nationals.

4. A State Party may also adopt such measures as may be necessary to establish its jurisdiction over the offences covered by this Convention when the alleged offender is present in its territory and it does not extradite him or her.

5. If a State Party exercising its jurisdiction under paragraph 1 or 2 of this article has been notified or has otherwise learned that one or more other States Parties are conducting an investigation, prosecution or judicial proceeding in respect of the same conduct, the competent authorities of those States Parties shall, as appropriate, consult one another with a view to coordinating their actions.

6. Without prejudice to norms of general international law, this Convention shall not exclude the exercise of any criminal jurisdiction established by a State Party in accordance with its domestic law.

Article 15[4]
Extradition

1. This article shall apply to the offences covered by this Convention and in cases where the person who is the subject of the request for extradition is located in the territory of the requested State Party, provided that the offence for which extradition is sought is punishable under the domestic law of both the requesting State Party and the requested State Party.

2. If the request for extradition includes several separate serious crimes, some of which are not covered by this article, the requested State Party may apply this article also in respect of the latter offences.

3. Each of the offences to which this article applies shall be deemed to be included as an extraditable offence in any extradition treaty existing between States Parties. States Parties undertake to include such offences as extraditable offences in every extradition treaty to be concluded between them.

4. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider this Convention the legal basis for extradition in respect of any offence to which this article applies.

5. States Parties that make extradition conditional on the existence of a treaty shall:

(a) At the time of deposit of their instrument of ratification, acceptance, approval of or accession to this Convention, inform the Secretary-General of the United Nations whether they will take this Convention as the legal basis for cooperation on extradition with other States Parties to this Convention; and

(b) If they do not take this Convention as the legal basis for cooperation on extradition, seek, where appropriate, to conclude treaties on extradition with other States Parties to this Convention in order to implement this article.

6. States Parties that do not make extradition conditional on the existence of a treaty shall recognize offences to which this article applies as extraditable offences between themselves.

7. Extradition shall be subject to the conditions provided for by the domestic law of the requested State Party or by applicable extradition treaties, including, inter alia, conditions in relation to the minimum penalty requirement for extradition and the grounds upon which the requested State Party may refuse extradition.

8. States Parties shall, subject to their domestic law, endeavour to expedite extradition procedures and to simplify evidentiary requirements relating thereto in respect of any offence to which this article applies.

9. Subject to the provisions of its domestic law and its extradition treaties, the requested State Party may, upon being satisfied that the circumstances so warrant and are urgent and at the request of the requesting State Party, take a person

whose extradition is sought and who is present in its territory into custody or take other appropriate measures to ensure his or her presence at extradition proceedings.

10. A State Party in whose territory an alleged offender is found, if it does not extradite such person in respect of an offence to which this article applies solely on the ground that he or she is one of its nationals, shall, at the request of the State Party seeking extradition, be obliged to submit the case without undue delay to its competent authorities for the purpose of prosecution. Those authorities shall take their decision and conduct their proceedings in the same manner as in the case of any other offence of a grave nature under the domestic law of that State Party. The States Parties concerned shall cooperate with each other, in particular on procedural and evidentiary aspects, to ensure the efficiency of such prosecution.

11. Whenever a State Party is permitted under its domestic law to extradite or otherwise surrender one of its nationals only upon the condition that the person will be returned to that State Party to serve the sentence imposed as a result of the trial or proceedings for which the extradition or surrender of the person was sought and that State Party and the State Party seeking the extradition of the person agree with this option and other terms that they may deem appropriate, such conditional extradition or surrender shall be sufficient to discharge the obligation set forth in paragraph 10 of this article.

12. If extradition, sought for purposes of enforcing a sentence, is refused because the person sought is a national of the requested State Party, the requested Party shall, if its domestic law so permits and in conformity with the requirements of such law, upon application of the requesting Party, consider the enforcement of the sentence that has been imposed under the domestic law of the requesting Party or the remainder thereof.

13. Any person regarding whom proceedings are being carried out in connection with any of the offences to which this article applies shall be guaranteed fair treatment at all stages of the proceedings, including enjoyment of all the rights and guarantees provided by the domestic law of the State Party in the territory of which that person is present.

14. Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons.

15. States Parties may not refuse a request for extradition on the sole ground that the offence is also considered to involve fiscal matters.

16. Before refusing extradition, the requested State Party shall, where appropriate, consult with the requesting State Party to provide it with ample opportunity to present its opinions and to provide information relevant to its allegation.

17. States Parties shall seek to conclude bilateral and multilateral agreements or arrangements to carry out or to enhance the effectiveness of extradition.

Article 16[4]
Transfer of sentenced persons

States Parties may consider entering into bilateral or multilateral agreements or arrangements on the transfer to their territory of persons sentenced to imprisonment or other forms of deprivation of liberty for offences covered by this Convention, in order that they may complete their sentences there.

Article 17[4]
Mutual legal assistance

1. States Parties shall afford one another the widest measure of mutual legal assistance in investigations, prosecutions and judicial proceedings in relation to the offences covered by this Convention.

2. Mutual legal assistance shall be afforded to the fullest extent possible under relevant laws, agreements and arrangements of the requested State Party with respect to investigations, prosecutions and judicial proceedings in relation to the offences for which a legal person may be held liable in accordance with article 9 of this Convention in the requesting State Party.

3. Mutual legal assistance to be afforded in accordance with this article may be requested for any of the following purposes:

(a) Taking evidence or statements from persons;

(b) Effecting service of judicial documents;

(c) Executing searches and seizures, and freezing;

(d) Examining objects and sites;

(e) Providing information, evidentiary items and expert evaluations;

(f) Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

(g) Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

(h) Facilitating the voluntary appearance of persons in the requesting State Party;

(i) Any other type of assistance that is not contrary to the domestic law of the requested State Party;

[(j) Identifying and tracing funds of illicit origin derived from acts of corruption;

(k) Returning such funds to their countries of origin.]

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit information relating to criminal matters to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this Convention.

5. The transmission of information pursuant to paragraph 4 of this article shall be without prejudice to inquiries and criminal proceedings in the State of the

competent authorities providing the information. The competent authorities receiving the information shall comply with a request that said information remain confidential, even temporarily, or with restrictions on its use. However, this shall not prevent the receiving State Party from disclosing in its proceedings information that is exculpatory to an accused person. In such a case, the receiving State Party shall notify the transmitting State Party prior to the disclosure and, if so requested, consult with the transmitting State Party. If, in an exceptional case, advance notice is not possible, the receiving State Party shall inform the transmitting State Party of the disclosure without delay.

6. The provisions of this article shall not affect the obligations under any other treaty, bilateral or multilateral, that governs or will govern, in whole or in part, mutual legal assistance.

7. Paragraphs 9 to 29 of this article shall apply to requests made pursuant to this article if the States Parties in question are not bound by a treaty of mutual legal assistance. If those States Parties are bound by such a treaty, the corresponding provisions of that treaty shall apply unless the States Parties agree to apply paragraphs 9 to 29 of this article in lieu thereof. States Parties are strongly encouraged to apply these paragraphs if they facilitate cooperation.

8. States Parties shall not decline to render mutual legal assistance pursuant to this article on the ground of bank secrecy.

9. States Parties may decline to render mutual legal assistance pursuant to this article on the ground of absence of dual criminality. However, the requested State Party may, when it deems appropriate, provide assistance, to the extent it decides at its discretion, irrespective of whether the conduct would constitute an offence under the domestic law of the requested State Party.

10. A person who is being detained or is serving a sentence in the territory of one State Party whose presence in another State Party is requested for purposes of identification, testimony or otherwise providing assistance in obtaining evidence for investigations, prosecutions or judicial proceedings in relation to offences covered by this Convention may be transferred if the following conditions are met:

(a) The person freely gives his or her informed consent;

(b) The competent authorities of both States Parties agree, subject to such conditions as those States Parties may deem appropriate.

11. For the purposes of paragraph 10 of this article:

(a) The State Party to which the person is transferred shall have the authority and obligation to keep the person transferred in custody, unless otherwise requested or authorized by the State Party from which the person was transferred;

(b) The State Party to which the person is transferred shall without delay implement its obligation to return the person to the custody of the State Party from which the person was transferred as agreed beforehand, or as otherwise agreed, by the competent authorities of both States Parties;

(c) The State Party to which the person is transferred shall not require the State Party from which the person was transferred to initiate extradition proceedings for the return of the person;

(d) The person transferred shall receive credit for service of the sentence being served in the State from which he or she was transferred for time spent in the custody of the State Party to which he or she was transferred.

12. Unless the State Party from which a person is to be transferred in accordance with paragraphs 10 and 11 of this article so agrees, that person, whatever his or her nationality, shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in the territory of the State to which that person is transferred in respect of acts, omissions or convictions prior to his or her departure from the territory of the State from which he or she was transferred.

13. Each State Party shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution. Where a State Party has a special region or territory with a separate system of mutual legal assistance, it may designate a distinct central authority that shall have the same function for that region or territory. Central authorities shall ensure the speedy and proper execution or transmission of the requests received. Where the central authority transmits the request to a competent authority for execution, it shall encourage the speedy and proper execution of the request by the competent authority. The Secretary-General of the United Nations shall be notified of the central authority designated for this purpose at the time each State Party deposits its instrument of ratification, acceptance or approval of or accession to this Convention. Requests for mutual legal assistance and any communication related thereto shall be transmitted to the central authorities designated by the States Parties. This requirement shall be without prejudice to the right of a State Party to require that such requests and communications be addressed to it through diplomatic channels and, in urgent circumstances, where the States Parties agree, through the International Criminal Police Organization, if possible.

14. Requests shall be made in writing or, where possible, by any means capable of producing a written record, in a language acceptable to the requested State Party, under conditions allowing that State Party to establish authenticity. The Secretary-General of the United Nations shall be notified of the language or languages acceptable to each State Party at the time it deposits its instrument of ratification, acceptance or approval of or accession to this Convention. In urgent circumstances and where agreed by the States Parties, requests may be made orally, but shall be confirmed in writing forthwith.

15. A request for mutual legal assistance shall contain:

(a) The identity of the authority making the request;

(b) The subject matter and nature of the investigation, prosecution or judicial proceeding to which the request relates and the name and functions of the authority conducting the investigation, prosecution or judicial proceeding;

(c) A summary of the relevant facts, except in relation to requests for the purpose of service of judicial documents;

(d) A description of the assistance sought and details of any particular procedure that the requesting State Party wishes to be followed;

(e) Where possible, the identity, location and nationality of any person concerned; and

(f) The purpose for which the evidence, information or action is sought.

16. The requested State Party may request additional information when it appears necessary for the execution of the request in accordance with its domestic law or when it can facilitate such execution.

17. A request shall be executed in accordance with the domestic law of the requested State Party and, to the extent not contrary to the domestic law of the requested State Party and where possible, in accordance with the procedures specified in the request.

18. Wherever possible and consistent with fundamental principles of domestic law, when an individual is in the territory of a State Party and has to be heard as a witness or expert by the judicial authorities of another State Party, the first State Party may, at the request of the other, permit the hearing to take place by video conference if it is not possible or desirable for the individual in question to appear in person in the territory of the requesting State Party. States Parties may agree that the hearing shall be conducted by a judicial authority of the requesting State Party and attended by a judicial authority of the requested State Party.

19. The requesting State Party shall not transmit or use information or evidence furnished by the requested State Party for investigations, prosecutions or judicial proceedings other than those stated in the request without the prior consent of the requested State Party. Nothing in this paragraph shall prevent the requesting State Party from disclosing in its proceedings information or evidence that is exculpatory to an accused person. In the latter case, the requesting State Party shall notify the requested State Party prior to the disclosure and, if so requested, consult with the requested State Party. If, in an exceptional case, advance notice is not possible, the requesting State Party shall inform the requested State Party of the disclosure without delay.

20. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request. If the requested State Party cannot comply with the requirement of confidentiality, it shall promptly inform the requesting State Party.

21. Mutual legal assistance may be refused:

(a) If the request is not made in conformity with the provisions of this article;

(b) If the requested State Party considers that execution of the request is likely to prejudice its sovereignty, security, *ordre public* or other essential interests;

(c) If the authorities of the requested State Party would be prohibited by its domestic law from carrying out the action requested with regard to any similar offence, had it been subject to investigation, prosecution or judicial proceedings under their own jurisdiction;

(d) If it would be contrary to the domestic law of the requested State Party relating to mutual legal assistance for the request to be granted.

22. States Parties may not refuse a request for mutual legal assistance on the sole ground that the offence is also considered to involve fiscal matters.

23. Reasons shall be given for any refusal of mutual legal assistance.

24. The requested State Party shall execute the request for mutual legal assistance as soon as possible and shall take as full account as possible of any deadlines suggested by the requesting State Party and for which reasons are given, preferably in the request. The requested State Party shall respond to reasonable requests by the requesting State Party on progress of its handling of the request. The requesting State Party shall promptly inform the requested State Party when the assistance sought is no longer required.

25. Mutual legal assistance may be postponed by the requested State Party on the ground that it interferes with an ongoing investigation, prosecution or judicial proceeding.

26. Before refusing a request pursuant to paragraph 21 of this article or postponing its execution pursuant to paragraph 25 of this article, the requested State Party shall consult with the requesting State Party to consider whether assistance may be granted subject to such terms and conditions as it deems necessary. If the requesting State Party accepts assistance subject to those conditions, it shall comply with the conditions.

27. Without prejudice to the application of paragraph 12 of this article, a witness, expert or other person who, at the request of the requesting State Party, consents to give evidence in a proceeding or to assist in an investigation, prosecution or judicial proceeding in the territory of the requesting State Party shall not be prosecuted, detained, punished or subjected to any other restriction of his or her personal liberty in that territory in respect of acts, omissions or convictions prior to his or her departure from the territory of the requested State Party. Such safe conduct shall cease when the witness, expert or other person having had, for a period of fifteen consecutive days or for any period agreed upon by the States Parties from the date on which he or she has been officially informed that his or her presence is no longer required by the judicial authorities, an opportunity of leaving, has nevertheless remained voluntarily in the territory of the requesting State Party or, having left it, has returned of his or her own free will.

28. The ordinary costs of executing a request shall be borne by the requested State Party, unless otherwise agreed by the States Parties concerned. If expenses of a substantial or extraordinary nature are or will be required to fulfil the request, the States Parties shall consult to determine the terms and conditions under which the request will be executed, as well as the manner in which the costs shall be borne.

29. The requested State Party:

(a) Shall provide to the requesting State Party copies of government records, documents or information in its possession that under its domestic law are available to the general public;

(b) May, at its discretion, provide to the requesting State Party in whole, in part or subject to such conditions as it deems appropriate, copies of any government records, documents or information in its possession that under its domestic law are not available to the general public.

30. States Parties shall consider, as may be necessary, the possibility of concluding bilateral or multilateral agreements or arrangements that would serve the purposes of, give practical effect to or enhance the provisions of this article.

[*Article 18*
Prevention and combating of the transfer of funds of illicit origin derived from acts of corruption]

[*Article 19*
Repatriation of funds derived from acts of corruption]

Article 20[4]
Joint investigations

States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are the subject of investigations, prosecutions or judicial proceedings in one or more States, the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.

Article 21[4]
Special investigative techniques

1. If permitted by the basic principles of its domestic legal system, each State Party shall, within its possibilities and under the conditions prescribed by its domestic law, take the necessary measures to allow for the appropriate use of controlled delivery and, where it deems appropriate, for the use of other special investigative techniques, such as electronic or other forms of surveillance and undercover operations, by its competent authorities in its territory for the purpose of effectively combating corruption.

2. For the purpose of investigating the offences covered by this Convention, States Parties are encouraged to conclude, when necessary, appropriate bilateral or multilateral agreements or arrangements for using such special investigative techniques in the context of cooperation at the international level. Such agreements or arrangements shall be concluded and implemented in full compliance with the principle of sovereign equality of States and shall be carried out strictly in accordance with the terms of those agreements or arrangements.

3. In the absence of an agreement or arrangement as set forth in paragraph 2 of this article, decisions to use such special investigative techniques at the international level shall be made on a case-by-case basis and may, when necessary, take into consideration financial arrangements and understandings with respect to the exercise of jurisdiction by the States Parties concerned.

4. Decisions to use controlled delivery at the international level may, with the consent of the States Parties concerned, include methods such as intercepting and allowing the goods to continue intact or be removed or replaced in whole or in part.

Article 22[4]
Transfer of criminal proceedings

States Parties shall consider the possibility of transferring to one another proceedings for the prosecution of an offence covered by this Convention in cases where such transfer is considered to be in the interests of the proper administration

of justice, in particular in cases where several jurisdictions are involved, with a view to concentrating the prosecution.

Article 23[4]
Establishment of criminal record

Each State Party shall adopt such legislative or other measures as may be necessary to take into consideration, under such terms as and for the purpose that it deems appropriate, any previous conviction in another State of an alleged offender for the purpose of using such information in criminal proceedings relating to an offence covered by this Convention.

Article 24[4]
Criminalization of obstruction of justice

Each State Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally:

(a) The use of physical force, threats or intimidation or the promise, offering or giving of an undue advantage to induce false testimony or to interfere in the giving of testimony or the production of evidence in a proceeding in relation to the commission of offences covered by this Convention;

(b) The use of physical force, threats or intimidation to interfere with the exercise of official duties by a justice or law enforcement official in relation to the commission of offences covered by this Convention. Nothing in this subparagraph shall prejudice the right of States Parties to have legislation that protects other categories of public officials.

Article 25[4]
Protection of witnesses

1. Each State Party shall take appropriate measures within its means to provide effective protection from potential retaliation or intimidation for witnesses in criminal proceedings who give testimony concerning offences covered by this Convention and, as appropriate, for their relatives and other persons close to them.

2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process:

(a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons;

(b) Providing evidentiary rules to permit witness testimony to be given in a manner that ensures the safety of the witness, such as permitting testimony to be given through the use of communications technology such as video links or other adequate means.

3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article.

4. The provisions of this article shall also apply to victims insofar as they are witnesses.

Article 26[3]
Assistance to and protection of victims

1. Each State Party shall take appropriate measures within its means to provide assistance and protection to victims of offences covered by this Convention, in particular in cases of threat of retaliation or intimidation.

2. Each State Party shall establish appropriate procedures to provide access to compensation and restitution for victims of offences covered by this Convention.

3. Each State Party shall, subject to its domestic law, enable views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 27[4]
Measures to enhance cooperation with law enforcement authorities

1. Each State Party shall take appropriate measures to encourage persons who participate or who have participated in the commission of any of the offences established in accordance with this Convention to provide factual, specific help to competent authorities that may contribute to the recovery of the proceeds of crime.

2. States Parties shall consider providing for the possibility, in appropriate cases, of mitigating punishment of an accused person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

3. States Parties shall consider providing for the possibility, in accordance with fundamental principles of its domestic law, of granting immunity from prosecution to a person who provides substantial cooperation in the investigation or prosecution of an offence covered by this Convention.

4. Protection of such persons shall be as provided for in article 25 of this Convention.

5. Where a person referred to in paragraph 1 of this article located in one State Party can provide substantial cooperation to the competent authorities of another State Party, the States Parties concerned may consider entering into agreements or arrangements, in accordance with their domestic law, concerning the potential provision by the other State Party of the treatment set forth in paragraphs 2 and 3 of this article.

Article 28[4]
Law enforcement cooperation

1. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the effectiveness of law enforcement action to combat the offences covered by this Convention. Each State Party shall, in particular, adopt effective measures:

(a) To enhance and, where necessary, to establish channels of communication between their competent authorities, agencies and services in order

to facilitate the secure and rapid exchange of information concerning all aspects of the offences covered by this Convention, including, if the States Parties concerned deem it appropriate, links with other criminal activities;

(b) To cooperate with other States Parties in conducting inquiries with respect to offences covered by this Convention concerning:

(i) The identity, whereabouts and activities of persons suspected of involvement in such offences or the location of other persons concerned;

(ii) The movement of proceeds of crime or property derived from the commission of such offences;

(iii) The movement of property, equipment or other instrumentalities used or intended for use in the commission of such offences;

(c) To provide, where appropriate, necessary items or quantities of substances for analytical or investigative purposes;

(d) To facilitate effective coordination between their competent authorities, agencies and services and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers;

(e) To exchange information with other States Parties on specific means and methods used by organized criminal groups, including, where applicable, routes and conveyances and the use of false identities, altered or false documents or other means of concealing their activities;

(f) To exchange information and coordinate administrative and other measures taken as appropriate for the purpose of early identification of the offences covered by this Convention.

2. With a view to giving effect to this Convention, States Parties shall consider entering into bilateral or multilateral agreements or arrangements on direct cooperation between their law enforcement agencies and, where such agreements or arrangements already exist, amending them. In the absence of such agreements or arrangements between the States Parties concerned, the Parties may consider this Convention as the basis for mutual law enforcement cooperation in respect of the offences covered by this Convention. Whenever appropriate, States Parties shall make full use of agreements or arrangements, including international or regional organizations, to enhance the cooperation between their law enforcement agencies.

3. States Parties shall endeavour to cooperate within their means to respond to acts of corruption committed through the use of modern technology.

Article 29[4]
Training and technical assistance

1. Each State Party shall, to the extent necessary, initiate, develop or improve specific training programmes for its law enforcement personnel, including prosecutors, investigating magistrates and customs personnel, and other personnel charged with the prevention, detection and control of the offences covered by this Convention. Such programmes may include secondments and exchanges of staff. Such programmes shall deal, in particular and to the extent permitted by domestic law, with the following:

(a) Methods used in the prevention, detection and control of the offences covered by this Convention;

(b) Routes and techniques used by persons suspected of involvement in offences covered by this Convention, including in transit States, and appropriate countermeasures;

(c) Monitoring of the movement of contraband;

(d) Detection and monitoring of the movements of proceeds of crime, property, equipment or other instrumentalities and methods used for the transfer, concealment or disguise of such proceeds, property, equipment or other instrumentalities, as well as methods used in combating money-laundering and other financial crimes;

(e) Collection of evidence;

(f) Control techniques in free trade zones and free ports;

(g) Modern law enforcement equipment and techniques, including electronic surveillance, controlled deliveries and undercover operations;

(h) Methods used in combating crime committed through the use of computers, telecommunication networks or other forms of modern technology; and

(i) Methods used in the protection of victims and witnesses.

2. States Parties shall assist one another in planning and implementing research and training programmes designed to share expertise in the areas referred to in paragraph 1 of this article and to that end shall also, when appropriate, use regional and international conferences and seminars to promote cooperation and to stimulate discussion on problems of mutual concern, including the special problems and needs of transit States.

3. States Parties shall promote training and technical assistance that will facilitate extradition and mutual legal assistance. Such training and technical assistance may include language training, secondments and exchanges between personnel in central authorities or agencies with relevant responsibilities.

4. In the case of existing bilateral and multilateral agreements or arrangements, States Parties shall strengthen, to the extent necessary, efforts to maximize operational and training activities within international and regional organizations and within other relevant bilateral and multilateral agreements or arrangements.

Article 30[4]

Other measures: implementation of the Convention through economic development and technical assistance

1. States Parties shall take measures conducive to the optimal implementation of this Convention to the extent possible, through international cooperation, taking into account the negative effects of corruption on society in general and on sustainable development in particular.

2. States Parties shall make specific efforts to the extent possible and in coordination with each other, as well as with international and regional organizations:

(a) To enhance their cooperation at various levels with developing countries, with a view to strengthening the capacity of the latter to prevent and combat corruption;

(b) To enhance financial and material assistance to support the efforts of developing countries to fight corruption effectively and to help them implement this Convention successfully;

(c) To provide technical assistance to developing countries and countries with economies in transition to assist them in meeting their needs for the implementation of this Convention. To that end, States Parties shall endeavour to make adequate and regular voluntary contributions to an account specifically designated for that purpose in a United Nations funding mechanism. States Parties may also give special consideration, in accordance with their domestic law and the provisions of this Convention, to contributing to the aforementioned account a percentage of the money or of the corresponding value of proceeds of crime or property confiscated in accordance with the provisions of this Convention;

(d) To encourage and persuade other States and financial institutions as appropriate to join them in efforts in accordance with this article, in particular by providing more training programmes and modern equipment to developing countries in order to assist them in achieving the objectives of this Convention.

3. To the extent possible, these measures shall be without prejudice to existing foreign assistance commitments or to other financial cooperation arrangements at the bilateral, regional or international level.

4. States Parties may conclude bilateral or multilateral agreements or arrangements on material and logistical assistance, taking into consideration the financial arrangements necessary for the means of international cooperation provided for by this Convention to be effective and for the prevention, detection and control of corruption.

Article 31[4]
Prevention

1. States Parties shall endeavour to develop and evaluate national projects and to establish and promote best practices and policies aimed at the prevention of corruption.

2. States Parties shall endeavour, in accordance with fundamental principles of their domestic law, to reduce existing or future opportunities for offenders to participate in lawful markets with proceeds of crime, through appropriate legislative, administrative or other measures. These measures should focus on:

(a) The strengthening of cooperation between law enforcement agencies or prosecutors and relevant private entities, including industry;

(b) The promotion of the development of standards and procedures designed to safeguard the integrity of public and relevant private entities, as well as codes of conduct for relevant professions, in particular lawyers, notaries public, tax consultants and accountants;

(c) The prevention of the misuse by offenders of tender procedures conducted by public authorities and of subsidies and licences granted by public authorities for commercial activity;

(d) The prevention of the misuse of legal persons by offenders; such measures could include:

(i) The establishment of public records on legal and natural persons involved in the establishment, management and funding of legal persons;

(ii) The introduction of the possibility of disqualifying by court order or any appropriate means for a reasonable period of time persons convicted of offences covered by this Convention from acting as directors of legal persons incorporated within their jurisdiction;

(iii) The establishment of national records of persons disqualified from acting as directors of legal persons;

(iv) The establishment of codes of business ethics to ensure that businessmen undertake to observe the principle of transparency in their actions;

(v) The establishment of codes of conduct for public officials;

(vi) The establishment of career-path rules for the merit-based selection, career structure and retirement of officials; and

(vii) The exchange of information contained in the records referred to in subparagraphs d (i) and (iii) of this paragraph with the competent authorities of other States Parties.

3. States Parties shall endeavour to promote the reintegration into society of persons convicted of offences covered by this Convention.

4. States Parties shall endeavour to evaluate periodically existing relevant legal instruments and administrative practices with a view to detecting their vulnerability to misuse by offenders.

5. States Parties shall endeavour to promote public awareness regarding the existence, causes and gravity of and the threat posed by corruption. Information may be disseminated where appropriate through the mass media and shall include measures to promote public participation in preventing and combating such crime.

6. Each State Party shall inform the Secretary-General of the United Nations of the name and address of the authority or authorities that can assist other States Parties in developing measures to prevent corruption.

7. States Parties shall, as appropriate, collaborate with each other and relevant international and regional organizations in promoting and developing the measures referred to in this article. This includes participation in international projects aimed at the prevention of corruption, for example by alleviating the circumstances that render socially marginalized groups vulnerable to the action of corruption.

Article 32[2]
Preventive measures

States Parties agree to consider the applicability of measures within their own institutional systems to create, maintain and strengthen:

(a) Standards of conduct for the correct, honourable and proper fulfilment of public functions. These standards shall be intended to prevent conflicts of interest and mandate the proper conservation and use of resources entrusted to government

officials in the performance of their functions. These standards shall also establish measures and systems requiring government officials to report to appropriate authorities acts of corruption in the performance of public functions. Such measures should help preserve the public's confidence in the integrity of civil servants and government processes;

(b) Mechanisms to enforce these standards of conduct;

(c) Instruction to government personnel to ensure proper understanding of their responsibilities and the ethical rules governing their activities;

(d) Systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public;

(e) Systems of government hiring and procurement of goods and services that assure the openness, equity and efficiency of such systems;

(f) Government revenue collection and control systems that deter corruption;

(g) Laws that deny favourable tax treatment for any individual or corporation for expenditures made in violation of the anti-corruption laws of the States Parties;

(h) Systems for protecting public servants and private citizens who, in good faith, report acts of corruption, including protection of their identities, in accordance with their constitutions and the fundamental principles of their domestic law;

(i) Oversight bodies with a view to implementing modern mechanisms for preventing, detecting, punishing and eradicating acts of corruption;

(j) Deterrents to the bribery of domestic and foreign government officials, such as mechanisms to ensure that publicly held companies and other types of association maintain books and records that, in reasonable detail, accurately reflect the acquisition and disposition of assets, and have sufficient internal accounting controls to enable their officers to detect acts of corruption;

(k) Mechanisms to encourage participation by civil society and non-governmental organizations in efforts to prevent corruption;

(l) The study of further preventive measures that take into account the relationship between equitable compensation and probity in public service.

Article 33
Code of conduct for public officials

1. States Parties shall, through educational techniques for promoting knowledge, foster the exploration and assimilation of ethical values and conduct, while also stimulating the acquisition of skills and attitudes conducive to observance of the principles underlying this Convention.

2. States Parties shall initiate human skill development processes for improving their organizational culture.

3. With the cooperation of the relevant United Nations entities and other multilateral bodies, guides and manuals shall be drawn up to provide models enabling States Parties to further internal processes of inculcating values among

public officials and to devise educational strategies for the exploration and assimilation of values.

4. States Parties shall set up and operate virtual ethics advice centres via the Internet and interactively to provide a service for the public and for public officials with queries or dilemmas of an ethical or legal nature, such centres to act as a support for efforts to strengthen moral values in society and to introduce tools into public administration that promote transparency.

Article 34[4]
Conference of the Parties to the Convention

1. A Conference of the Parties to the Convention is hereby established to improve the capacity of States Parties to combat corruption and to promote and review the implementation of this Convention.

2. The Secretary-General of the United Nations shall convene the Conference of the Parties not later than one year following the entry into force of this Convention. The Conference of the Parties shall adopt rules of procedure and rules governing the activities set forth in paragraphs 3 and 4 of this article, including rules concerning payment of expenses incurred in carrying out those activities.

3. The Conference of the Parties shall agree upon mechanisms for achieving the objectives mentioned in paragraph 1 of this article, including:

(a) Facilitating activities by States Parties under articles 29, 30 and 31 of this Convention, including by encouraging the mobilization of voluntary contributions;

(b) Facilitating the exchange of information among States Parties on patterns and trends in corruption and on successful practices for combating it;

(c) Cooperating with relevant international and regional organizations and non-governmental organizations;

(d) Reviewing periodically the implementation of this Convention;

(e) Making recommendations to improve this Convention and its implementation.

4. For the purpose of paragraphs 3 (d) and (e) of this article, the Conference of the Parties shall acquire the necessary knowledge of the measures taken by States Parties in implementing this Convention and the difficulties encountered by them in doing so through information provided by them and through such supplemental review mechanisms as may be established by the Conference of the Parties.

5. Each State Party shall provide the Conference of the Parties with information on its programmes, plans and practices, as well as legislative and administrative measures to implement this Convention, as required by the Conference of the Parties.

Article 35[4]
Secretariat

1. The Secretary-General of the United Nations shall provide the necessary secretariat services to the Conference of the Parties to the Convention.

2. The secretariat shall:

(a) Assist the Conference of the Parties in carrying out the activities set forth in article 34 of this Convention and make arrangements and provide the necessary services for the sessions of the Conference of the Parties;

(b) Upon request, assist States Parties in providing information to the Conference of the Parties as envisaged in article 34, paragraph 5, of this Convention; and

(c) Ensure the necessary coordination with the secretariats of relevant international and regional organizations.

Article 36[4]
Implementation of the Convention

1. Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention.

2. The offences established in accordance with articles 5, 7 and 22 of this Convention shall be established in the domestic law of each State Party independently of the transnational nature or the involvement of an organized criminal group as described in article 3, paragraph 1, of this Convention, except to the extent that article 5 of this Convention would require the involvement of an organized criminal group.

3. Each State Party may adopt more strict or severe measures than those provided for by this Convention for preventing and combating corruption.

Article 37[4]
Settlement of disputes

1. States Parties shall endeavour to settle disputes concerning the interpretation or application of this Convention through negotiation.

2. Any dispute between two or more States Parties concerning the interpretation or application of this Convention that cannot be settled through negotiation within a reasonable time shall, at the request of one of those States Parties, be submitted to arbitration. If, six months after the date of the request for arbitration, those States Parties are unable to agree on the organization of the arbitration, any one of those States Parties may refer the dispute to the International Court of Justice by request in accordance with the Statute of the Court.

3. Each State Party may, at the time of signature, ratification, acceptance or approval of or accession to this Convention, declare that it does not consider itself bound by paragraph 2 of this article. The other States Parties shall not be bound by paragraph 2 of this article with respect to any State Party that has made such a reservation.

4. Any State Party that has made a reservation in accordance with paragraph 3 of this article may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 38[4]
Signature, ratification, acceptance, approval and accession

1. This Convention shall be open to all States for signature from [...] to [...] in [...] and thereafter at United Nations Headquarters in New York until [...].

2. This Convention shall also be open for signature by regional economic integration organizations provided that at least one member State of such organization has signed this Convention in accordance with paragraph 1 of this article.

3. This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations. A regional economic integration organization may deposit its instrument of ratification, acceptance or approval if at least one of its member States has done likewise. In that instrument of ratification, acceptance or approval, such organization shall declare the extent of its competence with respect to the matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

4. This Convention is open for accession by any State or any regional economic integration organization of which at least one member State is a Party to this Convention. Instruments of accession shall be deposited with the Secretary-General of the United Nations. At the time of its accession, a regional economic integration organization shall declare the extent of its competence with respect to matters governed by this Convention. Such organization shall also inform the depositary of any relevant modification in the extent of its competence.

Article 39[4]
Entry into force

1. This Convention shall enter into force on the ninetieth day after the date of deposit of the fortieth instrument of ratification, acceptance, approval or accession. For the purpose of this paragraph, any instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such organization.

2. For each State or regional economic integration organization ratifying, accepting, approving or acceding to this Convention after the deposit of the fortieth instrument of such action, this Convention shall enter into force on the thirtieth day after the date of deposit by such State or organization of the relevant instrument.

Article 40[4]
Amendment

1. After the expiry of five years from the entry into force of this Convention, a State Party may propose an amendment and file it with the Secretary-General of the United Nations, who shall thereupon communicate the proposed amendment to the States Parties and to the Conference of the Parties to the Convention for the purpose of considering and deciding on the proposal. The Conference of the Parties shall make every effort to achieve consensus on each amendment. If all efforts at consensus have been exhausted and no agreement has been reached, the amendment shall, as a last resort, require for its adoption a two-

thirds majority vote of the States Parties present and voting at the meeting of the Conference of the Parties.

2. Regional economic integration organizations, in matters within their competence, shall exercise their right to vote under this article with a number of votes equal to the number of their member States that are Parties to this Convention. Such organizations shall not exercise their right to vote if their member States exercise theirs and vice versa.

3. An amendment adopted in accordance with paragraph 1 of this article is subject to ratification, acceptance or approval by States Parties.

4. An amendment adopted in accordance with paragraph 1 of this article shall enter into force in respect of a State Party ninety days after the date of the deposit with the Secretary-General of the United Nations of an instrument of ratification, acceptance or approval of such amendment.

5. When an amendment enters into force, it shall be binding on those States Parties which have expressed their consent to be bound by it. Other States Parties shall still be bound by the provisions of this Convention and any earlier amendments that they have ratified, accepted or approved.

Article 41[4]
Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations. Such denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

2. A regional economic integration organization shall cease to be a Party to this Convention when all of its member States have denounced it.

3. Denunciation of this Convention in accordance with paragraph 1 of this article shall entail the denunciation of any protocols thereto.

Article 42[4]
Depositary and languages

1. The Secretary-General of the United Nations is designated depositary of this Convention.

2. The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations.

IN WITNESS WHEREOF, the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed this Convention.

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Proposals and contributions received from Governments

Bolivia: position paper regarding the terms of reference for the United Nations Convention against Corruption

1. In pursuance of its international obligations, Bolivia is currently preparing a series of drafts of anti-corruption legislation, the main text being the preliminary draft of the law on countering corruption.

2. The task of preparing this draft legislation has been approached within the context of concepts such as political will, accountability, civil society, social control, transparency and corruption. Analysis of the issues leads to the unavoidable conclusion that the phenomenon of corruption is bound up with complex relations with the State, which has no convincing response to offer in the fight against this scourge.

3. A review of both the press and the broadcast media shows, for instance, that government services do not enjoy the sympathy of the public, which has less than complete confidence in the honesty of public officials, whether in the executive, judicial or legislative branches.

4. A survey of experience gained in other countries in the fight against corruption shows that efforts in this field are being conducted on the basis of the principles of integrity, sustainability and a sincere will on the part of the State to achieve success. In accordance with those precepts, the proposed legislation incorporates elements from recognized international instruments such as the Inter-American Convention against Corruption[1] and the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the Organization for Economic Cooperation and Development.[2]

5. The problem of corruption produces effects in three different spheres of national affairs, namely the economic, political and social spheres. As regards the first of these, figures quoted by the press indicate that Bolivia has lost some

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$450 million as a result of dishonest practices in public administration, which gives an idea of the economic impact of corruption.

6. In the political and social areas, the cost of such unlawful conduct imperils the representative and moral standing of the authorities and undermines the legitimacy of the democratic system and its institutional structures, thus compromising the governability and moral integrity of the nation.

7. Taking a strategic view of the war on corruption, it is crucial to ensure, for example, that the definitions and terminology used in the provisions of the future law are consistent with the nature of the phenomenon. Another important point is the need to review the classification of criminal offences for which increased sanctions are imposed, bearing in mind the fact that such violations of the law undermine public confidence in the country's future.

8. The establishment of an anti-corruption agency is regarded as a fundamental element of this strategic view, an element of such importance, in fact, that the appointments in question are to be made by the Chamber of Deputies, a fully representative, democratic and multi-party body, and after consultation also with civil society.

9. Accordingly, a legal framework for the anti-corruption body is proposed in order to provide a mechanism for ensuring the lawfulness of investigatory efforts and measures to prevent the spread of corrupt practices, one essential feature of the body being its administrative and financial independence. This entity will operate within the sphere of public administration and also in the private sector in relation to administrative action, its appointees enjoying wide-ranging powers while also being liable under penal, civil and administrative law.

10. An example of the fact that the legislation in Bolivia is not complied with or, if it is, it is not "respected", is the fact that the entirely laudable idea of declaring assets under oath is not enforceable in practice because there is no provision for comparing declared and actual assets. This situation amply demonstrates the need for a state response to be combined with action by civil society to counter corruption.

11. The provisions established in the current preliminary draft law are not prejudicial to or incompatible with international treaties and conventions or other instruments of international law.

12. The preliminary draft law that has been adopted contains comprehensive provisions covering all forms of corruption, including the main criminal offences listed in the above-mentioned terms of reference such as transnational corruption and bribery, abuse of influence, the awarding of contracts against state interests, corrupt practices or illicit financial activities damaging to the economy, conflict of interest, failure by financial operators to fulfil their obligations and so forth. Some of these are provided for in the Criminal Code of Bolivia and in the current preliminary draft legislation with stricter sanctions for aggravated offences.

13. Like the entire international community, the Government of Bolivia is concerned about the seriousness of problems posed by corruption, which may endanger the stability and security of societies, undermine the values of democracy and morality and jeopardize social, economic and political development.

14. The Government of Bolivia is convinced that, since corruption is a phenomenon that transcends national borders and affects the whole of society and all economies, international cooperation is essential for its prevention and control.

15. By a law of 15 January 1997, the Government of Bolivia approved and ratified the Inter-American Convention against Corruption and, pursuant to its obligation under that Convention, is currently preparing the aforementioned draft law on countering corruption, the purpose of which is to promote and strengthen the mechanisms needed to prevent, detect, punish and eradicate corruption and to ensure the effectiveness of measures to counter corruption in the performance of public functions and related activities. It therefore fully supports the main elements of the draft United Nations Convention against Corruption.

16. The classification of acts of corruption under the Inter-American Convention against Corruption entails an obligation to establish them as criminal offences under Bolivian domestic law, essentially with the aim of preventing acts of corruption that undermine the integrity of the Bolivian democratic system.

Notes

[1] See E/1996/99.

[2] See *Corruption and Integrity Improvement Initiatives in Developing Countries* (United Nations publication, Sales No. E.98.III.B.18).

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Indonesia: non-paper on the United Nations Convention against Corruption

1. Corruption is the greatest threat to democracy, a cause of misallocation of resources and an obstacle to economic development. It is not merely a local, domestic problem but has instead a strong transnational dimension. For this reason, international cooperation is necessary to fight corruption. The United Nations Convention against Corruption must therefore provide for specific measures that make possible and indeed encourage international cooperation.

2. It is important that the convention cover (a) prevention; (b) criminalization and law enforcement; and (c) international cooperation. As indicated in the draft resolution adopted by the Commission on Crime Prevention and Criminal Justice at its reconvened thirty-fourth session,[1] a "multidisciplinary approach" should be the guiding principle of the convention. For this reason, none of these three aspects of the convention should be neglected in the fight against corruption.

3. The convention should provide for international cooperation and an effective framework to strengthen each State's capacity to fight against corruption, bearing in mind the importance not only of good governance but also of good corporate culture in the fight against corruption. Since differences in countries' legal systems and cultures could make the latter concept a difficult issue, it should be considered whether to include a definition of good corporate culture and related goals and minimum standards in an annex to the convention rather than in the text of the convention itself. Such an annex should extend the multidisciplinary approach also to areas such as the raising of public awareness, institution-building and standards and methods for monitoring anti-corruption policies.

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I. Prevention

4. Preventive measures are an important element of the convention and the desired multidisciplinary approach to the complex problem of corruption. To achieve maximum effectiveness, any such measures should take into consideration the differences between the legal and administrative systems of States.

5. In addition, when considering preventive measures, it is important that both good governance and good corporate culture are encouraged in order to attack multiple facets of the problem of corruption.

6. Important points to be addressed by the convention in this connection are indicated below.

Management of non-elected public officials

7. Although the public service personnel system varies between countries, it must be possible in the convention to establish minimum standards of good governance, including conduct, recruitment, employment and transparency, while at the same time permitting States parties to implement those standards in accordance with their own legal and administrative systems. Such standards could include measures to encourage merit-based hiring and promotion, objective standards for dismissal and adequate working conditions and remuneration, as well as requirements for officials to disclose their income, assets and debts, as a way to achieve improved transparency and avoid conflicts of interest.

8. An effective response to a multifaceted problem such as corruption, which often involves a dynamic relationship between public and private entities, cannot itself be one-sided. In addition to good governance, it must also be possible to address corruption by establishing minimum standards of good corporate culture, including proper management and transparency of legal persons.

9. In this connection, measures could include establishment of a public record of legal and natural persons involved in the establishment, management and funding of legal persons; establishment of proper standards for disqualification of directors of legal persons; establishment of measures to make possible and ensure external inspection, including establishment of the obligation to maintain accounting books and application of proper and adequate sanctions against their falsification and intentional omissions; and development of proper codes of conduct for attorneys, notaries and accountants (see art. 31 of the United Nations Convention against Transnational Organized Crime (the "Organized Crime Convention", General Assembly resolution 55/25, annex I)).

Government procurement and subsidies

10. The convention could introduce measures to address the issues of transparency and fairness in government procurement, subsidies, authorization and approval.

Disclosure of information

11. A system of disclosure of information in both the public and private sectors could be established in such a way that it does not endanger the States' integrity and

sovereignty, as this would contribute to transparency and thus to the prevention of corruption.

Public awareness

12. Since cultural and systemic differences between States can make uniform measures against corruption difficult to establish and implement and since public awareness of the nature of the problem of corruption can vary widely, the convention could also include measures to promote public awareness of the forms of corruption, its costs to society and methods of prevention. It is important to reduce the cultural permissiveness of corruption and to develop, where necessary, integrity and civic morality. At the same time, this cannot be done without transparency and providing the public with the necessary information or without appropriate legal protection, such as laws to protect "whistle-blowers". However, the convention should go beyond the mere recommendation of raising public awareness and give indications as to how to actively involve civil society at large and the victims of corruption in particular in the fight against corruption, as well as transnational corporations. The ultimate goal must be a true partnership rather than an increasingly disillusioned public.

Judicial and law enforcement agencies

13. The convention could introduce measures to ensure an independent yet accountable judiciary and fair and impartial law enforcement agencies. The institutions of the criminal justice system, as the ultimate guardians of national integrity, must be protected from corrupt practices. Integrity testing and an increasingly active involvement of civil society in the direct oversight of those institutions are measures that in some countries have proved extremely effective.

II. Criminalization and law enforcement

Basic principles

14. Since the primary objective of the convention is to protect and enhance the integrity of democratic governance as well as avoid the misuse and misallocation of public funds and resources, it should also focus on the most basic and fundamental type of corruption, namely, forms of bribery involving public officials, both domestic and foreign.

15. However, the multifaceted nature of the problem of corruption should be taken into consideration and it is also necessary for the focus of the convention to go beyond bribery and cover other forms of corruption as well, including embezzlement and misappropriation of public funds, favoritism, nepotism and the illegal financing of political parties. In addition, legislation should address both good governance and good corporate culture and laws criminalizing bribery of public officials and other forms of corruption should take this into account.

Definition of bribery

16. In order to avoid unnecessary confusion, article 8, paragraph 1, of the Organized Crime Convention could be used to define bribery.

"(a) The promise, offering or giving to a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties;

"(b) The solicitation or acceptance by a public official, directly or indirectly, of an undue advantage, for the official himself or herself or another person or entity, in order that the official act or refrain from acting in the exercise of his or her official duties"

and the definition of "public official" should follow the example of paragraph 4 of that article:

"4. For the purposes of paragraph 1 of this article and article 9 of this Convention, 'public official' shall mean a public official or a person who provides a public service as defined in the domestic law and as applied in the criminal law of the State Party in which the person in question performs that function."

Criminalization of bribery

17. Given the international nature of corruption and bribery and to simplify international cooperation in the fight against corruption, the convention should also provide for measures to assist States to criminalize bribery, both active and passive, involving officials working in international organizations, political parties and the private sector.

18. While the structure and legal status of political parties and their social and political influence may differ greatly from country to country, the question of bribery involving officials of political parties is of importance, especially to the extent that such officials have the capacity to influence the decisions and actions of public officials. While the issue of whether this exceeds the scope of the convention merits further discussion, if it is seen to fall under the scope of the convention, then the convention could also incorporate measures to cover this problem.

19. Private entities that provide public services but belong to the "private sector" category can be addressed by defining "public officials" to include them (following the example of article 8, paragraph 4, of the Organized Crime Convention).

20. Although the main target of the convention is corruption in the public sector, inclusion of the private sector is warranted given the multifaceted nature of such corruption and the interaction of the two sectors, whereby good governance and good corporate culture are interrelated.

Corruption other than bribery

21. Although the legal interest protected in cases of corruption involving bribery can be considered to be public integrity and in other corruption cases, such as embezzlement, misappropriation and breach of trust, it can be considered to be property rights, at the most fundamental level the damages caused by corruption are a result of misallocation of public resources. For this reason and because the multifaceted and interrelated nature of crimes of corruption makes it impossible to separate these classes of crime entirely, it would not be inappropriate for the convention to take into consideration crimes of corruption other than bribery.

Return of funds of illicit origin derived from corruption

22. One of the most difficult issues in connection with the fight against corruption is also one of the most crucially important, namely, how to resolve the complex issues connected with the return of funds of illicit origin derived from corruption. While concerns such as legitimate property right issues and the interests of bona fide third parties should not be neglected, enabling the return or confiscation of proceeds of illicit origin derived from corruption is of great importance both in terms of prevention and to mitigate the damage corruption causes to society through the misallocation of public resources it occasions. Given the many sensitive issues involved, including state immunity and the need to create procedures to implement the return of such proceeds, it is essential that this question be considered. Measures in this context should include adequate criminal and administrative sanctioning of those legal and natural persons who facilitate the diversion of public funds, in particular in cases where they did not comply with the standards governing their professional domain.

23. In this connection, the concept of shifting burden of proof also merits consideration in order to find a way to employ this concept in corruption proceedings with a view to recovering funds of illegal origin without compromising fundamental legal protection such as the presumption of innocence.

Criminal procedures

24. In view of the difficulty of investigation and prosecution given the nature of bribery and other corruption-related offences, which are usually committed privately or secretly, since all the parties to the offence have equally strong motivations to keep them secret, the introduction of mitigation of punishment and/or immunity from prosecution in certain cases, such as for "whistle-blowers", could be considered.

25. The future instrument could also devise new means of overcoming the secrecy of corruption by increasing the significance of circumstantial evidence indicating some source of illicit income of a public official. Criminal and/or administrative sanctioning of the possession of unexplained wealth is only one option that could be taken into consideration. Another possibility consists of developing measures to deprive the public official of his or her inexplicable wealth if he or she maintains a standard of living or is in control or possession of financial resources or property disproportionate to his or her present or past known sources of income and fails to give a satisfactory explanation in that regard. Finally, it may also very well prove necessary to rethink the concept of "penalty" as such and to start to rely more heavily on "property penalties" for certain types of crime rather than on imprisonment, or a combination of both.

III. International cooperation

26. Given the multifaceted and increasingly international nature of the corruption problem, it is important that international cooperation and related issues such as exchange of information, the freezing, confiscation and return of funds that are the proceeds of illegal activities or that have been illegally transferred, extradition of suspects, assistance to developing countries, cooperation with relevant international

organizations, implementation of the future instrument and its monitoring be considered.

IV. Monitoring

27. The convention should devise a system of impact-oriented self- and/or mutual evaluation of anti-corruption policies. The convention could also promote the use of a regular assessment of objective indicators of vulnerability to misconduct, including corrupt practices.

Notes

[1] See *Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part two, chap. I, sect. A, para. 1.

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Zambia: proposals concerning the United Nations Convention against Corruption

The proposals of Zambia are along the lines of the Southern African Development Community Protocol against Corruption, which Heads of State or Government of the member States of the Community signed in Blantyre, Malawi, on 14 August 2001. The following are the proposals:

(a) The convention should begin with a preamble, which would include some of the statements in the resolution of the General Assembly;

(b) It should have a section on definitions where terms such as "corruption" or "bribery", "public body", "public official", "confiscation" and "jurisdiction" are defined;

(c) It should have provisions explaining or listing the purposes or objectives of the convention;

(d) It should have provisions explaining what acts of corruption it covers. Here acts of corruption should cover not only public but also private officials. It should also cover corruption by foreign public officials;

(e) It should have provisions covering preventive measures against corruption in addition to investigative measures;

(f) The convention should include provisions obliging States parties to adopt measures to establish jurisdiction over offences established in accordance with the convention;

(g) It should have provisions dealing with development and harmonization of policies and domestic legislation in order to fulfil the purpose of the convention;

(h) The convention should have provisions obliging States parties to adopt measures for the confiscation of proceeds derived from the acts of corruption set

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forth in the convention and to provide mutual assistance in returning such proceeds to their countries of origin;

(i) It should have provisions dealing with extradition, judicial and legal assistance, protection of "whistle-blowers" and witnesses and protection of sovereignty. The issues mentioned in paragraph 3 of the terms of reference for the negotiation of the United Nations Convention against Corruption[1] must be covered in detail;

(j) The convention must provide for an institutional arrangement for implementation and oblige States parties to designate an authority for making and receiving requests for assistance and cooperation under the convention;

(k) The convention must explain its relationship with other treaties, conventions and protocols;

(l) The convention should provide for States to notify the Secretariat of measures, legislations and so on that they introduce as a result of or relevant to the convention. The Secretariat shall keep this and other related information for ease of access by States parties;

(m) The convention should indicate who the duly authorized signatories to the convention will be, methods of ratification and when it should come into force;

(n) It should also provide for ways by which the convention can be amended.

Notes

[1] See *Official Records of the Economic and Social Council, 2001, Supplement No. 10* (E/2001/30/Rev.1), part two, chap. I, sect. A, para. 1.

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Venezuela: proposals for consideration at the Informal Preparatory Meeting of the Ad Hoc Committee for the Negotiation of a Convention against Corruption

1. For several years, the highest importance has been attached by Venezuela to the problem of corruption, because the Venezuelan people has been affected by this scourge throughout its democratic history. It was for this reason that Venezuela proposed to the Permanent Council of the Organization of American States (OAS) a draft for an inter-American convention against corruption. Venezuela played an active role in the conclusion of the convention, and many of the proposals contained in its draft were included in the final document (see E/1996/99).

2. Now that the possibility of the adoption of an instrument of a universal nature is emerging in response to the concerns of many countries, Venezuela wishes to reaffirm its view that it is essential that a legal instrument of a universal nature should be adopted that, by taking into account the existing instruments and the experience provided by them, can contribute effectively to the eradication of the phenomenon of corruption.

3. In this context, the task of combating corruption is being taken up by the supreme audit institutions of the world in the framework of globalization. In 2000, a Euro-American conference was held in Madrid sponsored by the Court of Audit of Spain; the conference brought together heads of supreme audit institutions of countries of Europe, Latin America and the Caribbean, and the main topic was what such institutions could do within the different integration processes to combat impunity, fraud and the encouragement of negligence.

4. In Brazil in November 2000 and in Panama in August 2001, the tenth and eleventh sessions of the General Assembly of the Organization of Latin American and Caribbean Supreme Audit Institutions (OLACEFS) were held. At both sessions, attention was drawn to the need to promote effective mechanisms to fight corruption. To that end, a meeting was held in Washington, D.C., in October 2001 at which OLACEFS proposed to the Secretary-General of OAS the holding of a

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meeting that would bring together the secretariat of OAS, the Presidents of the Supreme Courts of Latin America and the Caribbean, the heads of the constitutional authorities for legal action by the State and the heads of the supreme audit institutions belonging to OLACEFS with a view to reinforcing efforts to promote administrative integrity and ethics within the context of the Inter-American Convention against Corruption.

5. Similarly, at the Seventeenth International Congress of Supreme Audit Institutions in Seoul, it was agreed that each supreme audit institution should promote, within its country, legislation against corruption and money-laundering.

6. Along the same lines, a study was conducted in the countries of the Andean region under the auspices of the Andean Development Corporation (CAF), OLACEFS and the supreme audit institutions of Bolivia, Colombia, Ecuador, Peru and Venezuela to survey the situation regarding corruption in the region over the past 10 years. That study brought to light the weakening of the ethical and moral values of society resulting from the high levels of corruption and impunity, the concentration of power and illegitimate means of obtaining access to power and remaining in power, the inadequacy of the operational and budgetary capacities of control institutions, the failure to meet basic needs (that is to say, the deterioration in living conditions) and, lastly, the lack of participation by the general public in denouncing irregular acts.

7. On the other hand, as a result of increasing access to information on public management, there has also been greater transparency in recent years, bringing to light acts of corruption. That transparency is reflected in the spreading of information on the activities of the public administration – including acts detrimental to community assets – through the mass media and by electronic means and through the participation of the general public, among other mechanisms.

8. Indicators and technical elements (such as standards or units of measurement) and data for assessing the degree of corruption in our societies in a quantitative way are inadequate, although attention should be drawn to the perception of the supreme audit institutions regarding the generalization of the phenomenon in all sectors, in new and diverse forms. In many cases, isolated, individual corruption has given way to systemic corruption on the part of groups organized for that purpose.

9. The phenomenon of corruption undoubtedly has serious implications in three areas:

(a) *In the economic area*. The use of the community's funds for the benefit of a few instead of for the common good has generated the poverty afflicting our countries and prevented their economic development. Diverting and misspending resources through acts of corruption prevents the resources from being used for the improvement of health and housing and the promotion of employment, product quality and price equilibrium – in short, in all the areas that have a direct effect on the quality of life of the people;

(b) *In the social area*. Impunity has favoured corruption and attacks political, cultural and intellectual values, affecting the coexistence of all citizens on an egalitarian basis. It is also important to stress that corruption does not exist exclusively in the public sector; it is also present in the private sector of society, at both the national and the international level. Where there is a corrupt official, there is usually also a corrupting entrepreneur or citizen.

(c) *In the political area*. Corruption conspires against the democratic system, discrediting state activity, with consequent detriment to or undermining of institutions, it creates dissatisfaction and a loss of credibility and it impedes sound and effective political management.

10. Venezuela therefore reaffirms the need for an effective, universal legal instrument and submits the proposals below.

11. With regard to definitions, Venezuela thinks it appropriate to stress that the convention should indicate clearly what is meant by the terms "acts of corruption" and "persons committing such acts" and it should define what is understood by "funds derived from acts of corruption" and "proceeds of crime". This proposal was submitted by the Venezuelan delegation when the Inter-American Convention against Corruption was being negotiated and after intensive discussions it proved possible to take it up only in an article entitled "Progressive development", under which the parties undertake to legislate on the matter in the future and to consider other types of action that could be regarded as "corrupt".

12. Through international cooperation, a system of international intelligence should be established that, respecting the sovereignty of the States parties, would provide a means of supporting their activities directed towards punishing corrupt persons, identifying and quantifying acts of corruption, bringing about the repatriation of ill-gotten gains, utilizing technological advances in the handling of data and establishing effective mechanisms to prevent or sanction corruption. To that end, the convention should recommend strategies and plans of action at both the national and the international level.

13. The convention should also provide for the establishment of a coordinating agency that would be responsible for designing and implementing educational programmes to promote the moral values of integrity and public service, establishing an information system within the framework of the United Nations and continually monitoring changes in the public and private sectors brought about by efficient operational plans for combating corruption.

14. Bank secrecy should be eliminated, so that protective legislation in those countries which recognize that principle does not convert them into tax havens in which capital derived from acts of corruption is laundered and which are sometimes used for the commission of other crimes that are already the subject of international action, such as drug trafficking, the financing of terrorism and political and financial corruption. If bank secrecy did not exist, monitoring of the vast fortunes derived from acts of corruption would be much easier. If bank secrecy cannot be eradicated, the convention should at least adjust the principle to international requirements so that it takes into account the needs of countries legitimately investigating specific acts of corruption.

15. The laundering of money or of assets has become a worldwide threat, endangering the security and stability of the financial system, affecting trade and even undermining government structures. The convention must urge States parties to legislate on the matter and to establish money-laundering as an offence under their domestic law, as well as to set up the necessary legal and administrative mechanisms for identifying, locating and seizing assets derived from offences against the public property of States.

16. The convention should include sanctions applicable to corporate bodies involved in acts of corruption; such sanctions could include identification of the

existence of a risk of corruption on the basis of the frequency with which such entities are involved in acts of corruption; publication and circulation at the international level of the names of entities so identified; and requirements for additional guarantees (security) to permit them to participate in commercial processes and their exclusion, for a period of up to five years, from the register of contractors and suppliers in those countries where such a register exists.

17. The responsibilities of international police agencies should include that of assisting supreme audit institutions in their investigations.

18. Lastly, greater participation is needed by organized civil society in all the States parties in order to bring about a united effort through non-governmental organizations, professional associations, groups defending human rights and any other groups that, through active participation, could have an influence on the decisions of States.